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DOCUMENT 105-B

CITY OF HAVERHILL

In Municipal Council November 27 2012 11.13.12

~~ORDERED:~~ MUNICIPAL ORDINANCE CHAPTER 255

Article XV. Merrimack Street Gateway Renaissance Overlay District (MSGROD)

[Added _____ by Doc. _____]

255-136 Purpose.

It is the purpose of this article to establish a Merrimack Street Gateway Renaissance Overlay District and thereby to encourage additional smart growth in the downtown core, to foster a range of housing opportunities along with mixed use development components including, among others, distinctive retail, education and education-based uses, performing arts, media and graphics arts, offices, restaurants, public and private access to and use of the Merrimack River, which is now effectively cut off by a substantial and necessary flood wall, to spark the development of marine use facilities taking advantage of the navigable waters of the Merrimack River adjacent to downtown Haverhill, and to encourage private capital to invest in the design and construction of distinctive and attractive site development programs that promotes compact design, creation of vital urban open space, and take advantage of a variety of transportation options, including enhanced pedestrian access to employment and nearby rail access. Other objectives of this article are to:

A. Promote the public health, safety, and welfare by encouraging diversity of housing opportunities;

B. Foster the long-term expansion of workforce and market-rate multi-family housing to bring further vitality and stability to the downtown Riverfront;

C. Increase the production of a range of housing units to meet existing and anticipated housing needs;

D. Establish requirements, standards, and guidelines, and ensure predictable, prompt, fair and cost-effective development review and permitting;

E. Establish development standards to allow context-sensitive design and creative site planning;

F. Enable the City to act quickly to take advantage of available capital and technical resources to redevelop key parcels; and

G. Establish an anchoring redevelopment at a major gateway to downtown Haverhill, adjacent to the Bradford Bridge (also known as the Route 125 bridge) over the Merrimack River.

255-137 Definitions.

For purposes of this Article XV, the definitions provided in Article II of this Zoning Ordinance shall be used except that (i) the following definitions shall apply instead of any conflicting definition in Article II, and (ii) in the event of any other conflict between a definition in Article II and the provisions of this Article XV which in context give another or a modified meaning to such definition, the provisions of this Article XV shall govern any Project which has elected to be governed by this Article XV instead of underlying zoning. All capitalized terms shall be defined in accordance with the definitions established under this Article XV, or as set forth in the rules and regulations of the Plan Approval Authority applicable to this District ("Regulations").

AS-OF-RIGHT PROJECT or PROJECT
A multifamily development or mixed use development allowed under § 255-140, which shall be as of right without recourse to a special permit, variance, zoning amendment, or other form of zoning relief.

EDUCATIONAL USE
Elementary schools, middle schools, high schools, colleges, universities, community colleges, media centers, arts centers, distance learning facilities, training centers and facilities, libraries and educational offices.

MULTIFAMILY DEVELOPMENT or MULTI-FAMILY DEVELOPMENT
A residential structure containing two or more dwelling units.

PLAN APPROVAL
Standards and criteria which a Project in the Merrimack Street Gateway Renaissance Overlay District must meet under the procedures established herein provided that Plan Approval shall be treated as non-discretionary and not subject to the standards applicable to special permits under this Zoning Ordinance, if the Plan Approval is appealed or attempted to be appealed by any person.

PLAN APPROVAL AUTHORITY
For purposes of reviewing Project applications and issuing decisions on development Projects within the Merrimack Street Gateway Renaissance Overlay District, the Planning Board shall be the Plan Approval Authority (the "PAA"), and is authorized to approve a site plan to implement a Project.

PRIORITY PROJECT
A mixed-use Project (i) in which 85% or more of the residential units are not restricted by income, (ii) which encompasses an area extending at least the full width between Merrimack Street and the flood wall along the Merrimack River, (iii) which provides public access to and along a boardwalk or promenade overlooking the Merrimack River or public access to the waters of the Merrimack River or both, and (iv) does not

require any waivers from the design standards or the density or dimensional requirements established by this Article XV.

RECREATIONAL USES
Active and passive recreational uses, including but not limited to walking and bicycle paths, bicycle and boat rentals and sharing services, and seasonal skating rinks.

ZONING ORDINANCE
The Zoning Ordinance of the City of Haverhill.

255-138 Overlay district.

A. Establishment. The Merrimack Street Gateway Renaissance Overlay District, hereinafter referred to as the MSGROD, is an overlay district that is superimposed over the underlying zoning district(s) applicable to the property shown on the map entitled "Merrimack Street Gateway Renaissance Overlay District," dated October 5, 2012 (the "MSGROD Map"). The MSGROD Map is hereby made a part of the Zoning Ordinance and is on file in the office of the City Clerk. To avoid any uncertainty that might otherwise arise from the scale of the MSGROD Map, the MSGROD is hereby specified to include the entire area bounded northerly by the center line of Merrimack Street, easterly by the center line of Bridge Street including the center line of such Street as it passes over the Bradford Bridge over the Merrimack River (being also the Route 125 bridge), southerly by the center line of the Merrimack River, and westerly by the westerly sideline of the public way known as Elliott Place and the extension of such line southerly to the centerline of the Merrimack River and northerly to the centerline of Merrimack Street as it enters Washington Square at the intersection with Emerson Street.

B. Relationship to Underlying zoning. The MSGROD is an overlay district superimposed on all underlying zoning districts including, without limitation, any other overlay zoning district which operates to provide additional restrictions, limitations or conditions on underlying zoning. The provisions applicable to such underlying zoning district(s) shall not be applicable to a Project within the MSGROD shown on a site plan which was submitted pursuant to §255-146 for such Project, and such Project shall instead be governed exclusively by the provisions of this Article XV.

255-139 Applicability of MSGROD.

An applicant for a Project located within the MSGROD may proceed to permit and develop such project either entirely pursuant to underlying zoning including, without limitation, any other overlay zoning district which operates to provide additional restrictions, limitations or conditions on underlying zoning, or, in the alternative, may seek Plan Approval for the Project solely in accordance with the requirements of this Article XV. If the Applicant seeks Plan Approval in accordance with the requirements of this Article XV, then notwithstanding anything to the contrary in the Zoning Ordinance, such application and the Project described therein shall be governed solely by this Article XV, and shall not be subject to any other

provisions of the Zoning Ordinance. If a parcel or lot does not have a Project that obtains Plan Approval, or, after Plan Approval, the Project does not obtain a building permit, then the parcel or lot shall remain available for use or redevelopment under either underlying zoning or, at the election of the same or another proponent, this Article XV.

255-140 Use Restrictions.

I. The following uses are permitted as of right in the MSGROD:

A. Mixed use development which must provide space in the Project or a phase thereof for each of: (1) at least one of the nonresidential uses listed in Section 140.I.B, below, or at least one of the uses listed in either Section 140.I.D or Section 140.I.E, below, and (2) multi-family development, which multi-family development may be provided throughout the Project, or within one or more specified building(s) or phase(s) of the Project consisting of only multi-family residential use. In addition, any building not immediately fronting on Merrimack Street, whether constructed as a Project, as part of a Project or as a phase of a Project, may be used for purely multi-family residential purposes.

B. The following nonresidential uses:

(1) Business and professional offices.

(2) Business service and consumer service establishments.

(3) Commercial and financial services.

(4) Eating and drinking establishments including, without limitation, seasonal outdoor seating.

(5) Retail uses.

(6) Educational Use.

(7) Research and development uses.

(8) Graphics arts and media arts studios, galleries and offices.

(9) Performing arts uses including without limitation indoor and outdoor stages.

(10) Community facilities including without limitation chapels and places of religious worship.

(11) Indoor athletic, fitness, health and health spa establishments including without limitation exercise establishments and martial arts and yoga studios.

(12) Inns and hotels.

C. Parking, including surface, garage-under, and structured parking (e.g., parking garages) and automobile-sharing and bicycle-sharing services, provided that such parking use and such services are either a component of a mixed use development or are accessory to another permitted use.

D. Open space and Recreational Uses including without limitation plazas, green areas and seasonal and occasional markets.

E. Marinas, piers, floats, boardwalks, fishing areas, and other facilities and amenities providing views of and access to the Merrimack River including, without limitation, boat rental, charter-boat facilities and boat-sharing services.

F. Accessory and ancillary uses customarily incidental to any of the above permitted uses shall also be permitted including, without limitation, day care accessory to any Educational Use or multifamily residential use, accessory swimming pools for use by residents, hotel or inn guests, workers or students in any mixed use development, accessory pet care, conference and meeting facilities, and roof gardens and roof structures accessory to any multifamily residential use or any Educational Use.

II. The following uses are prohibited in the MSGROD:

A. Septic System Repair Facility.

B. Solid Waste Disposal Facility.

C. Salvage Yard.

D. Self Storage Facility (other than any accessory storage units or accessory storage areas which are accessory to a permitted use such as a multi-family residential use or a retail or Education Use or a performing arts use, which shall be permitted provided the same shall be entirely located within a building and shall not be advertised or signed from the exterior of the building and shall be limited to use by Project residents, tenants and occupants).

E. Warehousing and Distribution Facility.

F. Motor Vehicle Service Station (Gasoline Sales).

G. Motor Vehicle General and Body Repair (provided that an accessory automobile detailing service may be provided within any parking-under structure).

H. Motor Vehicle Sales.

I. Motor Vehicle car wash (provided that an accessory automobile detailing service may be provided within any parking-under structure).

III. Uses, buildings and structures permitted under M.G.L. c.40A, Section 3, but not otherwise specifically contemplated in this Section 255-140, shall not proceed in or as part of a Project or any phase of a Project under this Article XV, but shall instead proceed solely in accordance with said M.G.L. c.40A, Section 3 and the applicable provisions of underlying zoning.

255-141 Project phasing.

An Applicant may propose that a Project will be phased, and the PAA, as a condition of any Plan Approval, may require a Project to be phased to mitigate any extraordinary adverse Project impacts on nearby properties.

255-142 Dimensional Regulations Applicable to the MSGROD

The Maximum Height allowable in the MSGROD shall be the lesser of 125 feet and 10 stories, or the lesser of 125 feet and 12 stories in the case of a Priority Project. The Maximum Height allowable, stated above, does not apply to mechanical equipment, elevator shafts and bulkheads, chimneys, cooling towers and other structures ordinarily carried above the roof and not ordinarily used for human habitation, regardless of height above the roof, nor to balustrades, knee walls, pergolas, shade structures, wind breaks and similar features of roof gardens provided the same are not more than 10 feet in height above the roof. Maximum Height in feet for any Project and any element thereof in the MSGROD shall be measured from the mean elevation of the portion of the river-ward sideline of Merrimack Street adjacent or most nearly adjacent to the Project, in order to encourage parking in any Project to be provided in a podium or similar parking-under structure. Maximum Height in stories for any Project and any element thereof in the MSGROD shall be measured starting with the first story above any parking provided in a podium or similar parking-under structure.

Except for Maximum Height there are no dimensional, area or similar requirements or limits for Projects in the MSGROD.

255-143 Density Requirements in the MSGROD.

A. Maximum as-of-right overall multi-family residential density for a Project shall be 220 dwellings per acre for a Priority Project and 110 dwellings per acre for all other Projects. Such density shall be determined using the entire area for any multi-family Project or any mixed use development Project excluding only the footprint of any building within the Project which does not have any multi-family residential uses in such building.

B. Maximum floor area ratio (FAR) for any Project shall be 4.0 which shall be calculated in accordance with the definition of Floor Area Ratio in Article II of this Zoning

Ordinance, and which, consistent with that definition, shall exclude all areas of any garage-under parking in any Project.

255-144 Parking requirements.

A. General. The purpose of these parking requirements is to encourage the use of public transportation and to make the downtown more pedestrian-friendly and bicycle-friendly. Parking requirements within the MSGROD are as follows.

(1) Surface parking lots and parking structures shall provide pedestrian walkways and connections to the sidewalk system.

(2) Parking structures shall be designed to be compatible with adjacent buildings and architecture.

B. Minimum off-street parking space requirements.

(1) Residential use: 1.0 space per dwelling unit, or, in the case of a Priority Project, 0.75 space per dwelling unit.

(2) Such off-street parking spaces shall be provided (i) within the Project itself or (ii) in an off-site parking lot or parking garage, provided that such off-site parking lot or garage and the Project shall be no further than 2500 feet distant from each other, measured on a straight-line basis at the point of minimum distance between some point on the perimeter of such lot or garage and some point on the perimeter of the Project, or (iii) in a combination of the foregoing.

C. Shared parking. The use of shared parking to fulfill parking demands noted above that occur at different times of day may be considered by the PAA. Minimum parking requirements above may be reduced at the discretion of the PAA for a mixed-use development that is a Priority Project or, in the case of other Projects, if the applicant can demonstrate that shared spaces will meet parking demands by using accepted methodologies (e.g., the Urban Land Institute Shared Parking Report, ITE Shared Parking Guidelines, or other PAA-approved studies). The applicant is encouraged to use the public parking facilities available in the downtown area and to lease parking in those facilities, and is permitted to use other off-site parking facilities in other locations as well.

D. Reduction of parking requirement. The required amount of parking may be reduced at the discretion of the PAA upon a showing that the lesser amount of parking will not cause excessive congestion, endanger public safety, or that lesser amount of parking will provide positive environmental or other benefits. The PAA may consider:

(1) The availability of surplus off-street parking in the vicinity of the use being served and/or the proximity of a bus or an MBTA transit station;

(2) The availability of public or commercial parking facilities in the vicinity of the use being served;

(3) Shared use of off-street parking spaces serving other uses having peak user demands at different times;

(4) Age, income or other characteristics of the likely occupants that are likely to result in a lower level of auto usage;

(5) Mixed-use nature of the Project that is likely to result in a lower level of auto usage;

(6) Availability as part of the Project of automobile-sharing services;

(7) Such other factors as may be considered by the PAA, including whether the reduction of the parking requirement is likely to encourage the use of public transportation or encourage a proposed development to be more pedestrian friendly, or whether the proposed Project will provide shuttle-bus services to off-site parking lots or parking garages.

255-145 Design Standards.

A. General Design Standards.

(1) The design of new buildings shall encourage public and private access to and along the Merrimack River and public and private use and viewing of the Merrimack River. Projects which provide physical or visual access to the Merrimack River or create further activity on the water sheet of the Merrimack River are encouraged. Physical access to the Merrimack River could include one or more of, but not be limited to, public and/or private docks, marinas, floats, piers, wharves and fishing areas. Visual access to the Merrimack River could include one or more of, but not be limited to, public boardwalks, public plazas, seasonal outdoor seating, seasonal or occasional markets, public walking or biking trails along or in close proximity to the Merrimack River, or lateral access from Merrimack Street to such boardwalks, plazas or trails, or a view corridor where the public could view the Merrimack River.

(2) New buildings shall be sited to establish view corridors from Merrimack Street to the River and to invite public pedestrian access to the waterfront from Merrimack Street.

(3) New buildings are encouraged to have designs, elements or lighting features that provide a new visual gateway, landmark or iconic view for downtown Haverhill when viewed from any one or more of Merrimack Street, Bridge Street, Main Street, the Merrimack River, the south bank of the Merrimack River and/or the Bradford Bridge.

(4) Adequate capital infrastructure for on-site municipal services shall be provided within any Project including water, sewer, and drainage.

(5) Adequate traffic circulation shall be provided to and from the Project's vehicular access points in order to maintain reasonable traffic control on Merrimack Street.

(6) Ground floor spaces facing Merrimack Street and facing any plaza on top of any parking-under podium or other parking-under structure shall be designed to encourage a lively, urban, pedestrian-friendly atmosphere.

(7) When dumpsters, utility meters, mechanical units and service areas cannot be located within a parking-under area or otherwise away from the street front, they shall be screened from view and shall not be located in the pedestrian right-of-way.

(8) Lighting shall not create overspill onto adjacent properties or into the night sky.

(9) One goal of the MSGROD is to promote new, urban design and layout in the MSGROD. Applicants shall not be required to preserve existing buildings, facades or other historic or potentially historic features or elements in the district, if any.

255-146 Application for Plan Approval.

A. Required submittals. The application for Plan Approval shall be accompanied by 20 copies of the following plans and documents, which shall demonstrate consistency with the standards set forth in this MSGROD. All site plans shall be prepared by a certified architect, landscape architect, and/or a civil engineer registered in the Commonwealth of Massachusetts. All landscape plans shall be prepared by a certified landscape architect registered in the Commonwealth of Massachusetts. All building elevations shall be prepared by a certified architect registered in the Commonwealth of Massachusetts. All plans shall be signed and stamped, and drawings prepared at a scale of one inch equals 40 feet or larger, or at another scale as requested by the applicant and approved in advance by the PAA, and shall show the following:

(1) The perimeter dimensions of the lot; Assessor's Map, lot and block numbers; and whether any lots are to be combined as one lot for zoning purposes for the Project.

(2) All existing and proposed buildings, structures, building setbacks, parking spaces, driveway openings, distance between buildings, plan view exterior measurements of individual buildings, driveways, service areas and open areas.

(3) Internal roads, sidewalks and parking areas (width dimensions of paving and indication of number of parking spaces).

(4) All facilities for sewage, refuse and other waste disposal and for surface water drainage.

(5) All proposed landscaping features, such as fences, walls, boardwalks, walks, promenades, outdoor stages, potential areas for seasonal and occasional markets, planting areas, marinas, docks, piers, floats and access points to the foregoing on the Project site.

(6) Existing major natural features, including streams, wetlands, buffer zones, regulated riverfront areas, regulated tidelands and filled tidelands areas, and all trees six inches or larger in caliper (caliper girth of the tree four feet above existing soil height at the trunk).

(7) Scale and North arrow (minimum scale of one inch equals 40 feet unless otherwise requested by the applicant and approved by the PAA in advance).

(8) Total site area in square footage and acres and area to be available as urban open space.

(9) The proposed residential density in terms of dwelling units per acre and types of proposed commercial uses in terms of the respective floor area, proposed recreation areas, and number of residential units proposed by type: number of studio, one-bedroom, two-bedroom and three-bedroom units, if applicable.

(10) Location sketch map (indicate surrounding streets and properties and any additional abutting lands owned by the applicant).

(11) Proposed marinas, piers, floats, fishing areas, areas, if any, for potential boat rental and boat sharing services, and other amenities providing public and private access to and views of the Merrimack River, including boardwalks, promenades, adjoining urban open space included in the Project and the pedestrian flows intended to link such proposed marinas, piers, floats, fishing and boating areas, etc. to such boardwalks, promenades and other land-side urban open space.

(12) Representative elevation sketches of buildings (indicate height of building and construction material of the exterior facade).

(13) Typical unit floor plan for residential uses. (Floor plan should be indicated for each type of unit proposed: either studio, one-bedroom, two-bedrooms or more.) The area in square feet of each typical unit should be indicated.

(14) Developer's (or its representative's) name, address and phone number.

(15) Any other information which may include required traffic, school, and/or utilities impact study and in order to adequately evaluate the scope and potential impacts of the proposed Project.

(16) If the Project should be reviewed as a Priority Project, a statement to that effect and a brief statement why it qualifies to be a Priority Project.

B. Records. All plans and elevations presented with the application shall remain a part of the records of the PAA. The provision of the plan and the application shall be the sole responsibility of the applicant.

255-147 Procedures.

A. Filing. An applicant for Plan Approval shall file the application and all required submittals with the City Clerk and shall also file forthwith the required number of copies of the application form and the other required submittals as set forth above with the City Planner on behalf of the PAA, including notice of the date of filing with the City Clerk.

B. Circulation to other boards. Upon receipt of the application, the City Planner shall immediately provide copies of the application materials to the City Council, the Planning Board, Board of Appeals, Board of Health, Conservation Commission, Fire Department, Police Department, Building Commissioner, Department of Public Works, Community Development, and other municipal officers, agencies or boards designated by the PAA for comment, and any such board, agency or officer shall provide any written comments, if any, within 60 days of its receipt of a copy of the plan and application for approval, or within 30 days of such receipt in the case of a Priority Project. Within 20 days after receipt of the application, the City Planner shall determine in writing whether the Project described in the application constitutes a Priority Project and shall inform the applicant, the PAA and such municipal boards, agencies and officers of such determination.

C. Hearing. The PAA shall hold a public hearing for which notice has been given as provided in MGL c. 40A, § 11. The decision of the PAA shall be made, and a written notice of the decision filed with the City Clerk, within 120 days of the receipt of the application by the City Clerk, or within 75 days of the receipt of the application by the City Clerk in the case of a Priority Project. The required time limits for such action may be extended by written agreement between the applicant and the PAA, with a copy of such agreement being filed in the office of the City Clerk. Failure of the PAA to take action within said 120 days, or said 75 days in the case of a Priority Project, or extended time, if applicable, shall be deemed to be an approval of the application and site plan.

D. Peer review. The applicant shall be required to pay for reasonable consulting fees to provide peer review of the Plan Approval application. Such fees shall be held by the City in a separate account and used only for expenses associated with the review of the application by outside consultants, including, but not limited to, attorneys, engineers, urban designers, architects, housing consultants, planners, and others. Any surplus

remaining after the completion of such review, including any interest accrued, shall be returned to the applicant.

255-148 Decision.

A. Waivers. Except where expressly prohibited herein, upon the request of the Applicant, the Plan Approval Authority may waive dimensional and other requirements of this Article XV in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the MSGROD, or if the PAA finds that such waiver will allow the Project better to achieve the intent and overall purposes of this Article XV.

B. Plan review. An application for Plan Approval shall be reviewed for consistency with the purpose and intent of this article, and such Plan Review shall be construed as an as-of-right review and approval process.

C. Plan Approval. Plan Approval shall be granted where the PAA finds by majority vote of the members present that:

(1) The applicant has submitted the required fees and information as set forth in this Article XV; and

(2) The Project and site plan meet the requirements and standards set forth in this Article XV, or a waiver has been granted therefrom; and

(3) Extraordinary adverse potential impacts of the Project on nearby properties have been adequately mitigated.

D. Plan disapproval. A site plan may be disapproved only where the PAA finds that:

(1) The applicant has not submitted the required fees and information as set forth in this Article XV; or

(2) The Project and site plan do not meet the requirements and standards set forth in this Article XV, or a waiver has not been granted therefrom; or

(3) It is not possible to adequately mitigate significant adverse Project impacts on nearby properties by means of suitable conditions.

E. Form of decision. The PAA shall issue to the applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the City Clerk and that all plans referred to in the decision are on file with the PAA. If 20 days have elapsed after the decision has been filed in the office of the City Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the City Clerk shall so certify on a copy of the decision. If

a site plan is approved by reason of the failure of the PAA to timely act, the City Clerk shall make such certification on a copy of the application. A copy of the decision or application bearing such certification shall be recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the applicant.

255-149 Change in plans after approval by PAA.

A. Minor change. After Plan Approval, an applicant may apply to make minor changes involving minor utility or building orientation adjustments, lighting or façade adjustments, or minor adjustments to parking, landscaping or other site details that do not affect the overall massing, final build-out or building envelope of the site, and do not materially affect the open space, from that shown on the previously approved site plan and do not increase the number of dwelling units in the Project in the aggregate from that provided in the original Plan Approval. Such minor changes must be submitted to the PAA on so-called "bubbled" prints of the approved plan, reflecting the proposed changes, and on application forms provided by the PAA. The PAA may authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The PAA shall set forth any decision to approve or deny such minor change by motion and written decision within thirty (30) days after the applicant has filed its application therefor, and the PAA shall provide a copy of its decision to the applicant for filing with the City Clerk.

B. Major change. Those changes deemed by the PAA to constitute a major change because of the nature of the change in relation to the prior approved plan, or because such change cannot be appropriately characterized as a minor change as described above, shall be processed by the PAA as a new application for Plan Approval pursuant to this Article XV.

255-150 Enforcement and appeal.

The provisions of the MSGROD shall be administered by the Building Inspector, except as otherwise provided herein. Any appeal arising out of action by the PAA regarding application for Plan Approval shall be governed by the provisions of MGL c. 40A applicable to as-of-right projects which have been subject only to a non-discretionary site plan review not involving or requiring any special permit and shall be made to a court of competent jurisdiction as set forth in M.G.L. c.40A, §17. Any other request for enforcement or appeal arising under this Article XV shall be governed by the applicable provisions of MGL c.40A.

255-151 Freeze During Process; Effectiveness and Validity of Plan Approval.

An application to the PAA for Plan Approval shall be governed by the applicable provisions of this Article XV in effect at the time of the submission of the application, while the plan is being processed, during the pendency of any appeal, and for three (3) years after Plan Approval. If an application is denied, such provisions in effect at the time of the

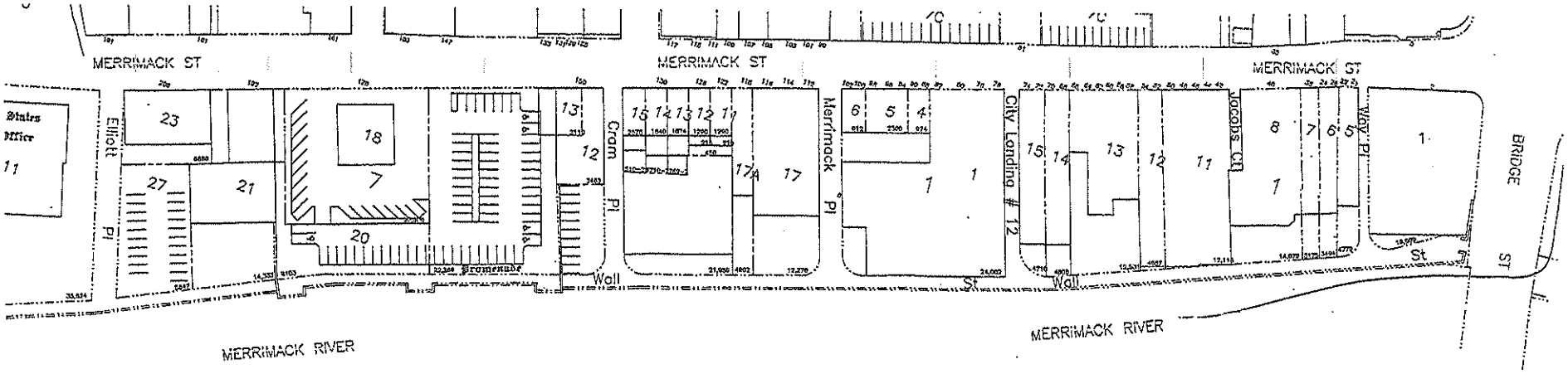
application shall continue in effect with respect to any further application filed within two (2) years after the date of the denial, except as the Applicant may otherwise choose.

A Plan Approval and any and all minor changes thereto sought by an Applicant, shall remain valid and shall run with the land indefinitely, and a Project shall be governed by the applicable provisions of this Article in effect at the time of the submission of the original application for such original Plan Approval (without regard to applications for minor changes) indefinitely, provided that construction of the Project covered by such Plan Approval has commenced within three (3) years after the decision is issued, which time shall be extended by the time required to adjudicate any appeal from such approval and which time shall also be extended if the Project proponent is actively pursuing other required permits for the Project or there is other good cause for the failure to commence construction, or as may be further extended as provided in a Plan Approval for a multi-phase Project. Such commencement of construction of the first phase of a Project covered by such Plan Approval within such three (3) year period, as so extended, shall constitute the timely commencement of construction of all phases of the entire Project for the purposes of this Article XV. No phase of a Project shall be in violation of zoning on account of a violation of zoning solely by one or more other phases of such Project. For purposes of this Article XV, commencement of construction shall include any material expenditure of funds on site work or environmental remediation or on any slurry wall, footings or foundation for any parking garage podium under the Project or under any portion or phase of the Project. The PAA may impose, but shall not be required to impose, such outside time limits for the commencement of the final phase of a phased Project as it sees fit, provided that the earliest date for such required commencement of such final phase shall not be earlier than seven (7) years after the Plan Approval decision is issued, as extended as provided above, nor later than fifteen (15) years after the Plan Approval decision is issued, as extended as provided above, and further provided that any failure to meet such outside time limits shall only affect the right to construct the un-built phase(s) and shall not affect the previously constructed phase(s) or the respective rights of the same. In the event of a casualty affecting a building or structure which itself, or the use thereof, would be nonconforming with the provisions of this Article XV but for the grandfathering provided by this Section, such structure may be repaired, rebuilt and/or reconstructed, as necessary, provided that any such repair, rebuilding or reconstruction shall be commenced within two (2) years after the date of such casualty, and shall thereafter be diligently and continuously prosecuted to completion. Except as provided in any one or more of the preceding sentences of this paragraph, any amendment to this Article shall apply to building permits applied for after the first notice of public hearing on such amendment.

The owner of a Project, or applicable portion thereof, may choose to waive the benefit of the provisions of this Section in writing.

No further Plan Approval, special permit, variance or the like shall ever be required to reconstruct a Project, or portion thereof, following any casualty.

On the other hand, any Alteration or Extension of a Project that would not conform to the then-existing provisions of this Article XV shall require a further Plan Approval or deemed Plan Approval.



Merrimack Street Gateway Renaissance Overlay District

October 5, 2012

For purposes of this Section: "Alteration" means any construction resulting in a material change in the structural parts or height of, or number of stories or footprint of, a building, or to permit a substantially different use of such building; and "Extension" means any material increase in physical size or a substantially different use.

255-152 Tax and other incentives for Priority Projects.

It is the city's intention to give preference to, and to fast track the approval of, Priority Projects, as defined in this Article XV. Accordingly, and notwithstanding any other provision of this Article or the city code to the contrary, the city may, in other to foster and encourage a Priority Project:

A. Establish the Priority Project, or the MSGROD, as a Development District within the meaning of M.G.L. c.40Q and the regulations thereunder and establish and provide District Improvement Financing, so called for the Priority Project, or the MSGROD.

B. Authorize tax increment financing (TIF) as allowed by M.G.L. c.40, Sections 59-60 and the regulations thereunder and authorize, to the extent allowable by law, a tax increment exemption from the portion of the real estate taxes.

C. Allow such other tax incentives as may be allowed by law or by Home Rule petitions allowed by the city council and the General Court of the Commonwealth.

255-153 Severability.

If any provision of this Article XV is found to be invalid by a court of competent jurisdiction, the remainder of Article XV shall remain in full force. The invalidity of any provision of this Article XV shall not affect the validity of the remainder of the City's Zoning Ordinance.

PLACED ON FILE for at least 10 days
Attest:

_____
City Clerk