

# Madbury Zoning Ordinances

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## Article I Preamble

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In pursuance of authority conferred by Chapter 31, SECTION 60-89, New Hampshire Revised Statutes Annotated (NH RSA) 1955, and for the purpose of promoting the health, safety, morals, prosperity, convenience, or general welfare, as well as efficiency and economy in the process of development of the incorporated Town of Madbury, New Hampshire, by securing safety from fire, panic, and other dangers, providing adequate areas between building and various rights-of-way, by preserving the rural charm now attached to our town, the promotion of good civic design and arrangements, wise and efficient expenditure of public requirements, and by other means, now therefore the following ordinance is hereby enacted by the voters of the Town of Madbury, New Hampshire, in official meeting convened.

The Town of Madbury acknowledges its place in the region as a residential bedroom community to surrounding towns including Dover, Durham, Portsmouth, and Rochester. The adopted Madbury Master Plan further advances the Town's desire to maintain its rural character, and acknowledges the reality that based upon the Town's existing development pattern and the lack of public infrastructure necessary to support commercial or dense residential development, Madbury's future land use pattern will be a reflection of its past. The dimensional and spatial requirements set forth in the Zoning Ordinances are adopted by the Town to protect the public health, safety and welfare of our residents, and the communities surrounding Madbury that rely on the Town as a source of clean drinking water. In addition to environmental concerns related to lot sizing, the Town also seeks to advance the Master Plan goal and the desire of its residents to maintain and preserve the aesthetic and historic character engrained in the community. These principles apply also to the frontage requirements that are advanced for public safety and aesthetic purposes.

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## Article II Districts

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For the purpose of this Ordinance the Town of Madbury is divided into districts as shown on the Zoning Map filed with the Town Clerk and dated February 13, 1963. This map shall be considered part of the Zoning Ordinances and includes the following:

1) General Residential and Agricultural District

The General Residential and Agricultural District includes the following tract or parcel of land, shown as Lot 2 on Sheet 9 of the Town of Madbury Tax Maps, and more particularly bounded and described as follows: beginning at an iron hub set in the ground on the southerly side of the Knox Marsh Road, so-called and running in a southeasterly direction by the Madbury-Dover town line and by other land formerly of Archie L. Davis for a distance of 543.5 feet, more or less, to an iron hub set in the ground; thence turning at an angle and running in a southerly direction by land of Carlo Cecchitti to the Bellamy River; thence turning at an angle and running in a westerly direction by the Bellamy River to the land of Peter Nilsen; thence turning at an angle and running in a northerly direction by said Nilsen land to said Knox Marsh Road; thence turning at an angle and running in an easterly direction by said Knox Marsh Road to the point of beginning. Meaning and intending to describe the parcel of land conveyed by Fiduciary Deed of Edward Hall, executor under the will of Archie I. Davis, to Frank S. Davis and Betty L. Davis, said deed dated December 15, 1975 and recorded at Book 978, Page 407, Strafford County Registry of Deeds.

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### 2) Civic District

The Civic District includes a parcel of land as indicated on Tax Map Sheet No. 6, Lots 2 and 2a, bounded as follows: commencing on the southerly side of Town Hall Road at the northwest corner of the Union Congregational Church; westerly to residence of Donald and Virginia Begley; hence southerly, bounded on the west by the William and Kenneth Tibbetts property to state Rte. 155; turning east along said road to the town property (town park); then turning at right angles to the road and running to approximately 150' of Town Hall Road; then turning westerly parallel with the road to and behind property owned by the Union Congregational Church; then turning to Town Hall Road and point of beginning.

### 3) Commercial and Light Industry District

The Commercial and Light Industry District will include all property within the following area bounded as follows: starting at the Madbury-Dover line running in a southwesterly direction on land owned by the Boston and Maine Railroad to the Bellamy river, then running in a southerly direction along the Bellamy River to the Boston and Maine Railroad tracks, then west along said tracks to a point opposite the property of Charles Tibbetts, then southerly along said line crossing Route 155 and bordering property of Charles Tibbetts and John Rowe to the Pudding Hill Road, then east along said road to the Mast Road and the Madbury-Dover line, then in a northerly direction along said line to the starting point.

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## Article III Definitions

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For the purpose of this ordinance, certain terms are defined as provided in this Article.

**ABUTTER:** Any person whose property adjoins or is directly across the street or stream from the land under consideration by the Planning Board, including that located in another town and as further defined in NH RSA 672:3.

**ACCEPTANCE OF APPLICATION BY THE BOARD:** The receipt, review, and signing of a completed application at a formal meeting of the Planning Board where abutters have been notified and notice has been posted.

**ACCESSORY BUILDING OR USE:** A building or use subordinate to the main building or use and customarily incidental to the main purpose of such building or use.

**ACCESSORY SIGN:** Any smaller sign relating to activities or business on the premises upon which the sign is located.

**APPROVAL:** Recognition by the Planning Board certified by written endorsement on the plat, that the final plat meets the requirements of these regulations and satisfies, in the judgment of the Planning Board, all criteria of good planning and design.

**APPROVAL, CONDITIONAL:** An approval with further criteria to be satisfied by the applicant prior to the recording of the final plat by the Planning Board.

**AQUIFER:** A geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.

**AQUIFER (STRATIFIED DRIFT):** A geological formation, group of formations or part of a formation of unconsolidated sediment composed of layers of rock, sand, gravel, silt, clay or similar deposits capable of storing and yielding groundwater to wells and springs.

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**BASAL AREA:** The cross sectional area of the main stem of a tree measured at a height of four and one-half feet above ground, usually expressed in square feet per acre for a stand of trees.

**BOARD:** Planning Board of the Town of Madbury.

**BOG:** A wetland distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soil and/or water conditions.

**BOND:** Any form of security including a cash deposit, surety bond, collateral, property, or instrument of credit in an amount and form satisfactory to the Planning Board.

**CARCINOGENIC:** A gas, liquid, or solid which is normally considered to be cancer causing or muta-genic. Examples: PCB's in some waste oils.

**CLUSTER DEVELOPMENT, CLUSTER SUBDIVISION:** A residential subdivision of a tract where, instead of dividing an entire tract into house lots of conventional size, the same number of housing units may be clustered on lots of the same or reduced dimensions. The remaining land in the tract, which has not been built upon, is reserved for common area to be held in some form of undivided ownership or easement so as to prevent it from ever being subdivided.

**COMMERCIAL ENTERPRISE:** Any activity which provides a product or service to the public for a reimbursement or fee, whether for profit or non-profit, such as professional services, retail stores, recreational facilities, automotive service stations or any other venture which could reasonably be determined as such.

**CONSERVATION LAND:** Land given to the public body which has been reserved and dedicated to the conservation of forests, park land, or other uses of a similar nature with the intent of preserving it in its original natural condition, safeguarding water supplies or diminishing flood danger.

**CONTAMINATION:** An impairment of water quality by chemicals, radio-nuclides, biologic organisms, or other extraneous matter whether or not it affects the potential or intended beneficial use of water.

**CORROSIVE:** Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.

**CUL-DE-SAC:** A local street with only one outlet and having an appropriate terminal for the safe and convenient reversal of traffic movement.

**DEVELOPMENT:** The carrying out of any construction, reconstruction, alteration of surface or structure or change of land use or intensity of use.

**DRIVEWAY:** The access, which is constructed or excavated for the purpose of continuous vehicular passage onto property.

**DWELLING:** Any residence, building, structure, trailer, mobile home or camp or part thereof, used and occupied for human habitation or intended to be used and includes any appurtenances belonging thereto or usually enjoyed therewith.

A. **Dwelling Unit:** One or more rooms, designed, occupied, or intended for occupancy as a separate living quarter, with cooking, sleeping and sanitary facilities provided within the unit for the exclusive use of a single family maintaining a household

B. **Single Family Dwelling:** A building containing one Dwelling Unit and that is not attached to any other dwelling by any means whatsoever, except an Accessory Apartment, and is surrounded by open space or yards.

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**C. Two-Family Dwelling:** A building containing, on a single lot, two Dwelling Units, each of which is totally separated from the other by a common shared wall extending from the lowest ground level to the highest roof level of the living portion of both units, or a ceiling and floor extending from exterior wall to exterior wall except for a common stairwell, if necessary.

**D. Accessory Apartment:** A Dwelling Unit accessory to a Single Family Dwelling and conforming to the requirements of Article V, Section 4.

**ENGINEER:** The duly designated engineer, planning consultant, or official assigned by the Planning Board.

**EXPLOSIVE:** A reactive gas, liquid or solid that will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.

**FACILITY:** Something that is built, installed, or established for a particular purpose.

**FINAL PLAT:** The map, drawing or chart on which the sub-divider's plan of subdivision is presented to the Planning Board for approval, and which, when approved, will be signed and submitted to the Register of Deeds of Strafford County for recording.

**FRONTAGE:** Continuous length of the lot bordering on and accessible from a public right-of-way.

**GASOLINE STATION:** That portion of a property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and distributed for the purposes of retail sale of gasoline.

**GROUNDWATER:** Subsurface water that occurs beneath the water table in soils and geologic formations.

**HAZARDOUS MATERIAL:** A material that is defined in one or more of the following categories:

**HIGHLY TOXIC:** A gas, liquid, or solid so dangerous to man as to afford an unusual hazard to life. Example: chlorine gas.

**HOME PRODUCE AND PRODUCTS:** Everything of an agricultural nature grown, produced, or conditioned on the property of the resident, also such Articles as are manufactured or altered by members of the household of the bona fide resident of any property.

**IGNITABLE:** A gas, liquid or solid which may cause fires through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.

**IMPERVIOUS:** not readily permitting the infiltration of water.

**IMPERVIOUS SURFACE:** a surface through which water or regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Earthen; wooden, or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces.

**INHARMONIOUS USE OF WET AREAS:** Those uses incompatible with the purpose of this Article, i.e., the regulations listed in Article IX, Section 1 Purpose, provided that, in cases of uncertainty, the use shall be denied and determined upon appeal to The Zoning Board of Adjustment in the usual manner provided by statute.

**JUNK:** Any old metals, bottles, mill waste, unfinished cloth, unfinished cotton or woolen mill yarns, old paper products, old rubber products, plastic or building materials, two or more unregistered motor vehicles not used for agricultural needs which are no longer intended or in condition for legal use on the public highways, and other second hand Articles, the accumulation of which is detrimental or injurious to the neighborhood.

**JUNKYARD:** A place where junk is bought, stored and sold as a business.

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**LOT:** A parcel of land considered as a unit which is capable of being occupied by a dwelling or other building and structures accessory thereto, including such open spaces and set backs as are required by this ordinance. A lot may or may not be land shown or described as a "Lot of Record" on a recorded deed, plan, or plot.

**LOT OF RECORD:** Any parcel of land in legal separate ownership or any lot plotted as a separate lot and so recorded with the Registrar of Deeds, Strafford County.

**MEAN HIGH WATER:** As determined according to the published tables and standards of the National Ocean Survey, adjusted to the locality from such tables.

**MOBILE HOME:** A home, which is mobile, a unit similar to a trailer coach except that it is equipped with running water and sanitary facilities, bath facilities and toilet. This term shall apply to such vehicle regardless of the removal of wheels, the placing of a mobile home on a foundation, or the construction of accessory buildings.

**MODERATELY TOXIC:** A gas, liquid or solid that through repeated exposure or in a single large dose can be hazardous to man.

**NONCONFORMING BUILDING, STRUCTURE, OR USE:** A building, structure, or use of land legally existing at the time of enactment of this ordinance and which does not conform to the regulations of the district in which it is situated.

**OPEN SPACE LAND:** Land in which development rights have been legally restricted, either by deed or public purchase of those rights. The restriction could permit restricted public access; allow recreational development or other uses of a similar nature, regardless of its subsequent ownership.

**OVERLAY DISTRICT:** A special purpose zoning district in which additional regulations apply, beyond those set forth in the underlying district(s). For the purposes of this and any other overlay district, where two or more district boundaries overlap or are superimposed one upon another, the regulations of all such districts shall apply, and wherever there is a conflict between applicable regulations or different overlapping districts, the more restrictive regulation shall apply.

**PRELIMINARY PLAT:** A plat prepared as required in the Subdivision Regulation SECTION II-B and submitted to the Planning Board prior to preparing the Final Plat.

**PREMATURE SUBDIVISION:** Any subdivision of land which would cause excessive expenditure of public funds or a hardship to the Town in order to provide adequate facilities, safety protection, highways, education, or expansion of Town-owned facilities.

**PRIMARY CONTAINMENT FACILITY:** A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.

**PUBLIC WATER SYSTEM:** As per NH RSA 485:1-a, XV, a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

**QUALIFIED SOIL SCIENTIST:** A person qualified in soils classification who is recommended or approved by the Soil Conservation Committee of the State of New Hampshire.

**RARE AND EXEMPLARY COMMUNITY** – a natural community identified by the New Hampshire Natural Heritage Bureau as being an exemplary example of a particular type of community and/or location of rare plants or animals.

**RE-SUBDIVISION:** The division of an existing subdivision or any change of lot size therein or the relocation of any street or lot in a subdivision.

**REFERENCE LINE:** The regulatory limit of surface water is determined as follows:

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For natural fresh water bodies without artificial impoundment, the natural mean high water level as determined by the NH Department of Environmental Services.

For artificially impounded water bodies with established flowage rights, the limit of the flowage rights and for water bodies without established flowage rights, the waterline at full pond as determined by the elevation of the spillway crest.

For coastal waters: the highest observable tide line, which means a line defining the furthest landward limit of tidal flow, not including storm events, which can be recognized by indicators such as the presence of a strand line of flotsam and debris, the land-ward margin of salt tolerant vegetation, or a physical barrier that blocks further flow of the tide.

For rivers and streams, the ordinary high-water mark.

**RELEASE:** Any unplanned or improper discharge, leak, or spill of a potential contaminant including a hazardous material.

**REGULATED SUBSTANCE:** petroleum, petroleum products, and substances listed under 40 CFR 302, 7-1-05 edition, excluding the following substances: (1) ammonia, (2) sodium hypochlorite, (3) sodium hydroxide, (4) acetic acid, (5) sulfuric acid, (6) potassium hydroxide, (7) potassium permanganate, and (8) propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure. *As per NH DES Rules Env-Wq 401, Best Management Practices for Groundwater Protection.* Excluded chemicals do not pose significant risk to groundwater.

**RIGHT-OF-WAY:** All present and proposed town, state and federal highways and the land on either side of same as covered by statutes to determine the width of rights-of way.

**SECONDARY CONTAINMENT:** a structure, such as a berm or dike with an impervious surface, that is adequate to hold any spills or leaks at 110% of the volume of the largest regulated container in the storage area.

**SECONDARY CONTAINMENT FACILITY:** A second tank, catchment pit, pipe, or vessel that limits and contains liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery are required.

**SHORELAND:** The land areas included within the Shore-land Protection District.

**SHORELINE:** The water's edge at mean high water.

**SIGN:** Any exterior surface of a structure, device attached to a structure, or outdoor surface upon which is printed or attached any letter, symbol, drawing, picture, or design used for visual communication which identifies or calls attention to any business, activity, person, or product associated with the premises.

**SNOW DUMP:** For the purposes of this ordinance, a location where snow, which is cleared from roadways and/or motor vehicle parking areas, is placed for disposal.

**SOIL, POORLY DRAINED:** Any soil type having a soil drainage classification of poorly drained when classified in accordance with the most recent definitions, standards, and procedures of the Society of Soil Scientists of Northern New England.

**SOIL, VERY POORLY DRAINED:** Any soil type having a soil drainage classification of very poorly drained when classified in accordance with the most recent definitions, standards, and procedures of the Society of Soil Scientists of Northern New England.

**SPILL RESPONSE PLANS:** Detailed plans for control, re-containment, recovery, and clean up of hazardous material releases, such as during fires or equipment failures.

**STRATIFIED-DRIFT AQUIFER:** A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial melt water, including gravel, sand, silt, or clay, which contains

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sufficient saturated permeable material to yield significant quantities of water to wells.

**STREET:** Any accepted street, avenue, lane, boulevard, cul-de-sac, road, ally, highway, or other accepted way exclusive of driveways serving not more than two adjacent lots.

**SUB-DIVIDER:** The owner of record of land to be subdivided, or agent of any such owner.

**SUB-DIVISION:** The division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, or of building development. It includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision under these regulations.

**TOURIST HOME:** Any one family residence of normal residential proportions consisting of a room or group of rooms located within the confines of the original residential structure where transient accommodations for sleeping are provided for a price.

**TRAILER COACH:** Any vehicle or similar portable structure having no foundation other than wheels, jacks or skirting, and having no running water or sanitary facilities. This term shall apply to such vehicles regardless of the removal of wheels, the placing of a trailer coach on a foundation, or the construction of accessory buildings.

**TRAILER OR MOBILE HOME PARK:** Land upon which two or more trailer coaches or mobile home are parked and occupied for living purposes regardless of whether or not a charge is made for such accommodations.

**UNDEVELOPABLE LAND:** Land that has poorly drained soils or land having a slope greater than 15%.

**VERNAL POOL:** A confined basin depression that, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, provides essential breeding habitat for certain amphibians and invertebrates, and is free of adult fish populations.

**WELLHEAD PROTECTION AREA:** The surface and subsurface area surrounding a water well or well field supplying a community public water system, through which contaminants are reasonably likely to move toward and each such water well or well field.

**WETLAND SCIENTIST:** A person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified by RSA 310A:84, II-a and II-b, is qualified to delineate wetland boundaries and prepare wetland maps in accordance with standards for identification of wetlands adopted by the New Hampshire Department of Environmental Services or The United States Army Corps of Engineers or its successor, and who has been duly certified by the board.” (RSA 310-A:76) If necessary, a botanist shall be used in conjunction with the wetlands scientist to identify wetland vegetation where required. The botanist shall have equivalent and practical experience to that of the wetland scientist.

**WET AREA:** An area that includes all types of wetlands, as herein defined, very poorly drained and poorly drained soils and vernal pools. The USDA Natural Resources Conservation Service has defined wetlands as those areas composed of wetland soils. These are mineral and organic soils that are rated as poorly or very poorly drained; that is, those soils have a water table at or near the ground surface for seven or more months of the year.

Poorly drained soils are those characterized as having high water tables, within which may be areas suitable for habitable development if well planned drainage can be accomplished.

The soils identified as poorly drained are:

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LeA, leB, lcB, lrA	Leicester
Sb	Saugatuck
ScA, ScB	Scantic
SwA, SwB	Swanton

Very poorly drained soils are classified as those in areas of periodic flooding and/or those having the most severe limitations because of high water table.

The soils identified as very poorly drained are:

Be	Biddeford
MI	Mixed Alluvial Land
Mp	Muck And Peat
Ta	Tidal Marsh

**WETLAND:** An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soils. Wetlands include, but are not limited to, swamps, marshes, bogs, vernal pools, and similar areas.

**WETLAND, NON-TIDAL:** A wetland that is not subject to periodic inundation by tidal waters.

**WETLAND, PRIME:** A wetland designated by the Madbury Board of Selectmen in accordance with RSA 482-A:15 as having one or more of the values set forth in RSA 482-A:1 and that, because of its size, unspoiled character, fragile condition or other relevant factors, makes it of substantial significance.

**WETLAND, TIDAL:** A wetland whose vegetation, hydrology, or soils are influenced by periodic inundation of tidal waters (See NH RSA 483:A-1-a, I).

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### Article IV General Provisions

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#### Section 1. Lot of Record

Any building or use otherwise permitted in the district in which it is located shall be permitted on a lot of record regardless of frontage and area requirements, providing, however, that adjoining lots in common ownership shall be joined in such manner as to meet, or most nearly meet, such frontage and/or area requirements.

#### Section 2. Obnoxious or Injurious Uses

Any uses that may be obnoxious or injurious by reason of the production or emission of odor, dust, smoke, refuse matter, fumes, noise, vibrations, or similar conditions, or that are dangerous to the comfort, peace, enjoyment, health, or safety of the community or lending to its disturbance or annoyance are prohibited in any district.

#### Section 3. Fire Ruins

No owner or occupant of land in any district shall permit fire ruins or other ruins to be left but shall remove same within two years.

#### Section 4. Septic Locations

No septic tank or sewage disposal area shall be constructed less than:

- 100 feet from the edge of a public body of water or a permanent stream.
- 75 feet from a well.

## Madbury Zoning Ordinances

- 75 feet from a dwelling other than that to which it is appurtenant.
- 75 feet from soils classified as very poorly drained including a wet area buffer per Article IX.
- 50 feet from soils classified as poorly drained including a wet area buffer per Article IX.

### **Section 5. Solid Waste Locations**

Solid waste disposal sites and junkyards shall conform to national and state regulations and in no case can be located less than 75 feet from the edge of a public body of water or stream, from a well, or from a dwelling other than that to which it is appurtenant.

### **Section 6. Yard Sales and Flea Markets**

- A. "yard sale" or "flea market" for the purpose of this ordinance shall be deemed to be the sale of items offered to the public in an indoor or outdoor display on property normally used for purposes other than such sales. Examples of other such purposes include, but are not limited to, vacant lots and commercial properties. This ordinance section shall also include "barn sales" and "garage sales" or other similar activities.
- B. The conduct of a temporary yard sale, garage sale, auction or any such sale offering items for purchase by the general public, shall be permitted provided all of the following conditions are met:
1. Such sale of goods is conducted for no more than two periods not exceeding 48 consecutive hours in each period in any one calendar year per lot.
  2. Adequate parking shall be provided so as not to interfere with normal traffic flow.
  3. Any signs relating to such sale may not be placed more than 24 hours prior to the opening of the sale and shall be removed within 24 hours after conclusion of the sale.

### **Section 7. Minimum Lot Size: Qualifying Area**

This Ordinance lists Minimum Lot Size requirements in several Articles.

The area of any lot designated as satisfying the Minimum Lot Size requirement must meet these qualifications:

- The qualifying area must be contiguous in nature and capable of adequately accommodating all required utilities such as water supply and sewage disposal;
- The qualifying area does not include very poorly drained soils or bodies of water;
- The qualifying area consists of not more than 25% poorly drained soils and/or slopes greater than 15%.

Where the frontage boundary line is undefined, a default boundary location twenty five feet (25') from the road center line shall be used to determine qualifying area and setbacks.

No building(s) or structure(s) shall be constructed and no use shall be established on a lot having less than the required qualifying area.

### **Section 8. Conflicting Provisions**

In the event that the provisions of this ordinance are found to conflict with another provision of this ordinance, statute, or regulation, the more restrictive shall apply.

# Madbury Zoning Ordinances

## **Section 9. Conditional Use Permits<sup>1</sup>**

### **A. Authority**

The Town of Madbury adopts this Article pursuant to the authority granted under RSA 674:16 and more specifically RSA 674:16 II and 674:21 relative to innovative land use controls.

### **B. Purpose and Application**

1. The purpose and intent of a Conditional Use Permit is to allow certain uses that are required to be reviewed by the Planning Board and are not normally permitted under conventional zoning provisions
2. Land uses requiring Conditional Use Permits are identified in the various districts and overlay district articles in this Zoning Ordinance.
3. Any use lawfully established prior to the adoption, extension or application of this Article that is now subject to a Conditional Use Permit may continue in the same manner and to the same extent as conducted prior to said adoption or extension of this Article. A Conditional Use Permit shall be secured from the Planning Board before the use or structure or building in which said use is conducted may be altered, added to, enlarged, expanded or moved from one location to another on the lot where said use is located.

### **C. Procedures**

1. Application for Conditional Use Permit
  - a. Application for a Conditional Use Permit may be made by the owner of the affected property or his designated agent on a form available from the Planning Board. Applicants should include all relevant information for Planning Board consideration.
  - b. The completed application and nonrefundable fee shall be submitted to the Planning Board.
2. Procedure for Consideration.
  - a. The Planning Board shall consider the application at its next regular meeting following the public notice process.
  - b. A Conditional Use Permit application and review may be accomplished concurrently with Site Plan Review or Subdivision Application in accordance with relevant procedures and requirements.
  - c. The Planning Board shall determine what documentation and information is required to evaluate the application.

### **D. Approval Criteria**

The Planning Board shall grant a Conditional Use Permit if it determines that the proposal conforms to all of the following criteria:

1. The site is suitable for the proposed use. Considerations include:
  - a. Adequate vehicular and pedestrian access for the intended use.
  - b. Adequate public services to serve the intended use including emergency services, schools, and other municipal services.
  - c. The absence of environmental constraints (e.g., floodplains, steep slopes).
  - d. Appropriate utilities to serve the intended use including water, sewage disposal, storm water disposal, electricity, and utilities.
2. External impacts:

The impacts of the proposed use on abutting properties and the neighborhood shall be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. Considerations shall include traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare. The location, design, nature and intensity of the use shall not have an adverse effect on the surrounding environment.

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<sup>1</sup> Section 9 added March 2015, references to this section in other Articles added concurrently

## Madbury Zoning Ordinances

3. Character of the site development:  
The proposed layout and design shall be compatible with the established character of the neighborhood and shall mitigate any external impacts of the use on the neighborhood.
  4. Preservation of natural, cultural, historic, and scenic resources:  
The proposed use including all related development activities shall preserve identified natural, cultural, historic, and scenic resources on the site and shall not degrade such resources identified on abutting properties.
  5. Other approval criteria and use restrictions specific to the district(s) (including overlay districts) applicable to the site.
- E. Limitations and Restrictions of Approved Use
1. A Conditional Use Permit shall stipulate any limitations or restrictions of use determined by the Planning Board to be necessary to further the objectives of this ordinance and the Master Plan, or which would otherwise allow the general conditions of this article to be satisfied.
  2. Conditional Use Permit limitations and restrictions shall ensure long-term compliance with these objectives. Periodic actions such as monitoring, reports, inspections, Planning Board review, or reapplication may be required.
- F. Approval of Application and Granting of Conditional Use Permit.
1. Upon approval, the Planning Board shall issue a Conditional Use Permit including the limitations or restrictions of use itemized in brief on the face of the permit. The Conditional Use Permit Notice of Decision and any Findings of Fact shall be recorded at the Strafford County Registry of Deeds.
- G. Termination and Transferability.
- Once granted, a Conditional Use Permit with its terms and conditions shall:
1. Run with the lot, building, structure or use and shall not be affected by changes in ownership.
  2. Terminate twelve (12) months from the date of authorization if the authorized use has not begun:
    - a. Unless otherwise specified in the conditions of approval; or
    - b. Unless the applicant can demonstrate good reason(s) at a public hearing before the Planning Board why the permit should be extended.
- H. Denial of application
1. If an application is denied by the Planning Board, no resubmittal of an application for a Conditional Use Permit for the same or similar use may be made for one (1) year from the date of denial.
  2. A resubmitted application shall be treated as a new application.
  3. A revised or updated application may be submitted at any time if the Planning Board determines that:
    - a. Revisions to the application are substantial and warrant reconsideration
    - OR
    - b. Relevant circumstances have changed to an extent that justifies reconsideration.
- I. Non-Compliance
- Failure to comply with the conditions of approval for a Conditional Use Permit shall be deemed a violation of this Ordinance and subject to enforcement by the Board of Selectmen as per RSA 676-15. Such enforcement may include revocation of the permit.

### **Section 10. Document Reference**

For any external document that is referred in this Zoning Ordinance, it is assumed for purposes of this Ordinance that such document is the latest revision or its successor document.

# Madbury Zoning Ordinances

## Article V General Residential and Agricultural District

### Section 1. Purpose

The purposes of the Residential and Agricultural District are to provide for low-density residential development that can be served by private wastewater treatment systems and developed in such a manner to maintain the open, rural character of the land for agricultural purposes.

The Town of Madbury acknowledges its place in the region as a residential bedroom community to surrounding towns including Dover, Durham, Portsmouth, and Rochester. The adopted Madbury Master Plan further advances the Town's desire to maintain its rural character, and acknowledges the reality that based upon the Town's existing development pattern and the lack of public infrastructure necessary to support commercial or dense residential development, Madbury's future land use pattern will be a reflection of its past. The dimensional and spatial requirements set forth in the Zoning Ordinances are adopted by the Town to protect the public health, safety and welfare of our residences, and the communities surrounding Madbury that rely on the Town as a source of clean drinking water. In addition to environmental concerns related to lot sizing, the Town also seeks to advance the Master Plan goal and the desire of its residents to maintain and preserve the aesthetic and historic character engrained in the community. These principles apply also to the frontage requirements that are advanced for public safety and aesthetic purposes

### Section 2. Uses Permitted

- A. It shall be a district of dwellings and farms. No other uses than those specified will be permitted except the special exception uses which may be granted by the Board of Adjustments as provided under Article XV, SECTION 2.
- B. A single-family or a two-family dwelling is permitted in this district.
- C. General farming, including horticulture, floriculture, dairying, livestock and poultry raising, and other agricultural uses, or the raising of animals for other purposes are permitted in this district.
- D. Home produce and home products and agricultural products may be bought and sold and exposed for sale in this district.
- E. Tourist homes may be maintained and operated in this district.
- F. Nursing homes, assisted living facilities and hospice facilities are permitted in this district if they have frontage on and are accessed by State Routes 108, 155 or 9. The facility must receive Site Plan Review approval by the Planning Board.
  1. "Nursing home" means a place which shall provide, for 2 or more persons, basic domiciliary services (board, room, and laundry), continuing health supervision under competent professional medical and nursing direction, and continuous nursing care as may be individually required<sup>1</sup>.
  2. "Assisted Living Facility" means a supported residential health care facility, reflecting the availability of social or health services, as needed, from appropriately trained or licensed individuals, who need not be employees of the facility, but shall not require nursing services complex enough to require 24-hour nursing supervision. Such facilities may also

<sup>1</sup> See RSA 151 C-2 XXVI, as of March 2012

## Madbury Zoning Ordinances

- include short-term medical care for residents of the facility who may be convalescing from an illness and these residents shall be capable of self-evacuation.<sup>1</sup>
3. "Hospice Facilities" means a free standing 24-hour residential setting licensed under RSA 151 as a supported residential care facility for terminally ill individuals with less than one year to live who no longer have a home or cannot remain safely there. Palliative care such as room, meals, personal care, medication monitoring and emotional support, is provided. Additional health care services may be provided to residents through arrangements with outside organizations as is currently available if the resident was in his own home.<sup>2</sup>
- G. Property owners shall be allowed two information-advertising signs for produce sold on the premises or professional or business signs not to exceed fifteen square feet in area, set back at least 25 feet from the right of way; flashing or rotating lights are not permitted.
- H. Building, structures, and uses, which are accessory to buildings or uses permitted by this ordinance, shall be permitted in this district except that this shall not include the storage of waste or junk.
- I. No junkyard shall be established or operated in the Town of Madbury without a written permit from the Town Selectmen. All junkyards so permitted to operate in the Town of Madbury shall be required to meet all the standards set by the State of New Hampshire for the operation of such facilities.
- J. No dwelling or any other building shall be constructed less than fifty (50) feet from wetland soils.
- K. Accessory Apartments in accordance with Section 4 of this Article.
- L. Impervious improvements shall not cover more than 25% of the lot area.
- M. All trailer coaches and mobile homes moved into Town shall conform as to safety, convenience, and welfare of the Town.

### **Section 3. Minimum Dimensional Requirements**

- A. Minimum Lot Size  
A lot for a dwelling and any other usages permitted shall be of sufficient size to provide adequate water supply and sewage facilities:
1. Single-family dwelling: eighty thousand (80,000) square feet;
  2. Two-family dwelling: one hundred twenty thousand (120,000) square feet .
- B. Minimum Contiguous Road Frontage: 200 feet.
1. In the case of a lot on a curve of a road or other special geographical feature which makes this frontage difficult to achieve, the Planning Board may approve frontage less than 200 feet provided that no structure may be constructed closer to the road than a point where the setback line is two hundred (200) feet in width providing this setback exceeds fifty (50) feet.
- C. Front Setback: 50 feet
- D. Side and Rear Setback: 15 feet
- E. Lot depth: 150 feet

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<sup>1</sup> See RSA 151:9 VII (a) (2) , as of March 2012

<sup>2</sup> See RSA 151 C-2 XIX (b) , as of March 2012

# Madbury Zoning Ordinances

## **Section 4. Accessory Apartments**

### **A. Purpose:**

Accessory Apartments are permitted in order to provide expanded housing opportunities and flexibility in household arrangements to accommodate family members or nonrelated people of a permitted, owner occupied, Single Family Dwelling, while maintaining aesthetic and residential use compatible with homes in the neighborhood.

Accessory Apartments are permitted to enhance reasonable and realistic opportunities within Madbury for a balanced supply of housing affordable to persons and families of low and moderate income. (See RSA 672:1,III-e)

### **B. Requirements and Limitations**

1. Accessory Apartments shall be attached secondary and accessory to a principal Single Family Dwelling unit.
2. The Accessory Apartment should be developed in a manner consistent with the character or appearance of the principal dwelling unit as a Single Family Dwelling.
3. An Accessory Apartment shall not be considered to be an additional Dwelling Unit for the purpose of determining minimum lot size.
4. Only one Accessory Apartment shall be allowed per Single Family Dwelling and lot. Lots must conform to current requirements for Single Family Dwellings.
5. Any necessary additional entrances or exits shall be located to the side or rear of the building whenever possible.
6. Accessory Apartments shall be designed to allow for reincorporation into the principal Dwelling Unit.
7. The gross living area of an Accessory Apartment shall not be less than 350 square feet and not greater than 650 square feet.
8. Accessory Apartments shall have not more than one bedroom.
9. Adequate off street parking shall be provided to serve the combined needs of the principal Dwelling Unit and the Accessory Apartment.
10. Adequate provisions must exist or be made for ingress and egress of vehicles.
11. The existing, replacement or proposed septic system must be certified by a licensed septic designer as adequate to support the Accessory Apartment in accordance with New Hampshire RSA 485A:38.
12. A building permit for an Accessory Apartment must be issued prior to the construction of such unit. A Building Permit shall not be issued unless all requirements of this ordinance are met.

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## **Article V-A**

### **Residential Cluster Development Overlay District**

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#### **Section 1. Purpose**

The purpose of cluster zoning is to encourage the preservation of open space, to promote the more efficient use of land in harmony with its natural features and to allow more efficient use of services. It encourages flexibility and variety in residential development within prescribed limits so as to enhance and protect the health, safety, convenience and general welfare of the inhabitants of Madbury. Residential Cluster Development is an alternative to the development of land for residential purposes following strict adherence to basic provisions of the zoning ordinance. In furtherance of these purposes, the overall density of a Residential Cluster Development shall not exceed the density of the underlying zoning district in a conventional subdivision layout.

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## **Section 2. Definitions**

- A. Common Area: Any parcel of land and /or area of water set aside as a result of the alternate dimensional controls and designed and intended for the benefit and enjoyment of the residents of a cluster development or the community at large. These areas may contain accessory structures and improvements necessary and appropriate for the educational, recreational, cultural and social or other non-commercial uses, plus any utility services used by the owners of the common area, or may be Open Space as defined herein.
- B. Open Space: Land not built upon which must be kept permanently in that condition, and cannot be eligible for discretionary easements or for current use taxation.
- C. Homeowner's Association: A private, non-profit corporation or other non-profit legal entity established by the developer for the benefit of the residents of the Cluster development. Membership would be mandatory for property owners and made a required covenant in any deed issued or passed. The Association would provide voting and use rights in the Common Area when applicable and could charge dues to cover expenses, which may include tax liabilities, recreational or utility facilities. Articles of Association or incorporation would have to be reviewed and approved by the Planning Board.

## **Section 3. Standards and Conditions Required for Approval**

- A. Type of housing units permitted:
  - 1. Single-family dwellings;
  - 2. At the Planning Board's option and with a 2/3rd vote of the entire Board, the Madbury Planning Board may approve Two-Family dwellings if the Board determines that it will be of benefit to the Town of Madbury to do so. The Planning Board shall consider the location of the proposed subdivision, design and layout of the proposed development, the surrounding neighborhood and other factors, as appropriate when making its decision.
- B. Location: A cluster may be located only in the residential and agricultural district.
- C. Net Developable Area: The total of areas meeting the Minimum Lot Size Qualifications less all road and utility rights of way that are unbuildable. The contiguous area qualification may be satisfied by separate contiguous areas for each dwelling lot.
- D. Minimum Size Development: The tract of land on which a Cluster Development is located shall have a total area of at least ten (10) acres.
- E. Minimum Open Space: The Open Space for any Cluster shall not be less than 25 percent of the total area of the tract to be so subdivided. Each Open Space area to be utilized to satisfy the Minimum Open Space requirement shall be at least one contiguous acre in size, accessible to all cluster residents, and shall not consist of more than 25 percent wet areas. It is not the intent of this section to disallow larger quantities of open space, including wet areas, as part of the Open Space, so long as the minimum amount has been provided, and satisfies the aforementioned requirements.
- F. Buffers:
  - 1. All Cluster Developments shall have a minimum of a 75-foot perimeter buffer between any structure and a perimeter property line.
  - 2. The buffer along existing Town or State roads shall be a minimum of 125 feet.
  - 3. Buffers may be owned by individual lot owners so long as the areas are encumbered by easements, or may be part of the open space, at the applicant's discretion.
  - 4. It is the intent of these regulations to not allow lots to be subdivided with frontage on existing town roads, as part of a Residential Cluster Development. However, the Planning Board recognizes that every parcel of land in Madbury is unique, and the Planning Board

## Madbury Zoning Ordinances

may allow 'frontage' lots where the layout of the land accommodates such a design consistent with the purpose of this article.

- G. Recreation Area. While the Town of Madbury encourages the preservation of open space and recognizes the benefits of Residential Cluster Developments, it also recognizes the needs of the residents of these developments to have adequate upland areas upon which to recreate. For up to 10 lots in a Residential Cluster Development, there shall be a minimum of one acre of contiguous upland which must be generally square or rectangular in shape and graded in a manner to reasonably allow the residents to play sports upon the land. All Recreation Areas shall be located entirely in the Open Space area(s). For every additional lot in excess of 10, there shall be an additional 5,000 square feet of Recreation Land (level and entirely upland) in addition to the one-acre minimum. The Planning Board and the applicant shall determine where best to situate these recreation areas throughout the subdivision.
- H. Permitted Density: For single family dwellings the number of units shall be determined by dividing the number of net developable area by the conventional lot size for that zoning district (e.g. 80,000 square feet). For Two-Family dwellings, the number of dwellings shall be determined by dividing the number of net developable acres by 75 percent of the conventional lot size for that district (e.g. 60,000 square feet). In no case shall the density of a Residential Cluster Development exceed the density of a conventional subdivision of the same parcel. All Residential Cluster Development subdivision applications shall contain a conceptual plan depicting a conventional subdivision design with conforming lot sizes, cul-de-sac lengths, and which could reasonably be permitted. It is not the intent of this Ordinance to require a fully engineered yield plan, however, should the Planning Board determine, upon review of the conceptual plan, that a conventional subdivision would not be permitted, it shall be the applicant's responsibility to provide the necessary proof required to satisfy the Planning Board.
- I. Sewage Disposal: All septic disposal systems must meet all standards set forth by the Town of Madbury and must be approved by the NHDES. Each Dwelling Unit except an Accessory Apartment shall be served by an individual septic system.
- J. The minimum lot size shall be 30,000 square feet of contiguous buildable land per Dwelling Unit.
- K. Minimum Frontage:
  - 1. The minimum road frontage on existing town roads shall be 200 feet per lot.
  - 2. The minimum road frontage on proposed roads internal to the cluster shall be 100 feet per lot or 60 feet per lot if located on a cul-de-sac.
  - 3. Road frontage will be on a Town approved road or road built to Town specifications and approved by the Planning Board.
- L. All utilities shall be installed underground.
- M. Roads: All internal roads servicing three or more Dwelling Units shall be built to town standards.
- N. Common Area Structures: All Structures proposed to be constructed within the Common Area shall be subject to Planning Board site review and approval. No structure shall be constructed within the Common Area without Planning Board approval. The Planning Board may, at its discretion, condition its approval or disapproval of the structure as inappropriate to the Cluster Development.

### **Section 4. Conditions Which May Be Considered by the Planning Board in Approving a Cluster Development Plan**

- A. Maintenance of Common Area;

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- B. Home Owner Association;
- C. Fees;
- D. Ownership of Common Land;
- E. Conservation Land;
- F. Open Space Land;
- G. Special Studies;
- H. Public Hearings;
- I. Design Requirements;
- J. Frontage and Setbacks;
- K. Interconnection to any existing or new water and/or sewage system;
- L. Adequate off-street parking.

### **Section 5. Procedures**

- A. Cluster Development: A Cluster Development shall be subject to the granting of approval of the site plan by the Planning Board.
- B. Impact Statement: The application must include an impact statement, which details the probable effects of that subdivision or development on the following aspects of concern to the Town:
  - 1. Attendance at public schools;
  - 2. Changes in vehicular traffic;
  - 3. Changes in the number of legal residents;
  - 4. Increases in municipal cost;
  - 5. Load on public utilities or future demand on them;
  - 6. Public safety;
  - 7. Changes in tax revenue;
  - 8. Changes in surface drainage;
  - 9. Increased refuse disposal;
  - 10. Increased consumption of groundwater;
  - 11. Pollution of water or air;
  - 12. Land erosion or loss of tree cover;
  - 13. Disturbance to the aspects of the natural ecology;
  - 14. Blocking of views; and
  - 15. Harmony with the character of surrounding development.
- C. Review Process: The Planning Board shall review the subdivision plan and statement, giving weight to the factors listed above as they affect the future of the Town and of the neighborhood adjacent to the site. Should the Board determine that any or all conditions create any undue stress upon the health, safety, or financial ability of the Town, the Board may disapprove a plan.

### **Section 6. Further Requirements**

- A. Uses will be the same as those permitted in the general Residential and Agricultural Districts.
- B. No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect shall be shown upon the plan.
- C. The Board may impose other conditions, safeguards and limitations on time and use pursuant to its regulations.

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- D. The permits granted under this section shall lapse within one (1) year if a substantial use has not commenced or if construction has not begun, except that the Planning Board may grant an extension for good cause and shall grant an extension if the delay was caused by the need to seek other permits.
- E. While observing the Cluster perimeter buffers, all existing town setback requirements shall apply.

### **Section 7. Saving Clause**

If any section, clause, provision, portion, or phrase of this Residential Cluster Development Overlay District Ordinance shall be held invalid or unconstitutional by any court of competent authority, such holding shall not affect, impair, or invalidate any other section, clause, provision, portion, or phrase of this Overlay District.

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## **Article V-B Home Occupations**

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### **Section 1. Purpose**

The purpose of this Article is to foster economic self-sufficiency. The Town of Madbury recognizes that modern telecommunications permit home-based businesses that have minimal impact on neighboring properties and on the character of the town. Furthermore, the Town recognizes the desirability of small scale, home-based businesses and professions that are consistent with the Madbury Master Plan.

### **Section 2. Uses Permitted**

There shall be two levels of Home Occupations allowed in the Residential and Agricultural District. Level I Home Occupations shall have no employees not living within the household, shall generate no additional vehicular traffic volume, and shall adhere strictly to guidelines concerning traffic safety, nuisance, septic discharge, pollution, hazardous materials, and storm water runoff as described in section 8. G through L of this Article. There shall be no visible exterior evidence of Level I Home Occupations.

- A. deleted<sup>1</sup>
- B. All other Home Occupations shall be defined as Level II and shall require a Conditional Use Permit issued by the Madbury Planning Board, using Performance Standards as described in Section 8. G through L of this Article.

### **Section 3. Procedure for Obtaining Conditional Use Permits**

Applications for Conditional Use Permits shall be subject to the same procedures as a Site Plan Review, consistent with NH RSA.

### **Section 4. Deleted<sup>2</sup>**

### **Section 5. Deleted**

### **Section 6. Deleted**

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<sup>1</sup> March 2015

<sup>2</sup> Sections 4-6 deleted March 2015

## Madbury Zoning Ordinances

### **Section 7. Retail Sales**

Retail sales of products not manufactured, produced, assembled, or grown on the premises are prohibited, with the exception of products which are incidental to a service provided.

### **Section 8. Performance Standards**

The Planning Board may grant a Conditional Use Permit only upon finding that the applicant meets all of the applicable Performance Standards set forth below in addition to all Approval Criteria in Article 4, Section 9 D of this Ordinance:

- A. Principal use of premises: Home Occupation uses shall be subordinate to the residential use of the premises and shall be limited to no more than one third of the gross floor area of all the buildings on the lot.
- B. Employees: No more than two non-resident employees shall be working on the premises at any one time.
- C. Traffic volume: The proposed business shall generate no more than 20 vehicle trips per day. A vehicle trip is defined as the arrival or departure of one motor vehicle.
- D. Trucking: The proposed business shall generate no more than six truck trips per day. Truck movements shall be limited to the hours of 8:00 AM through 6:00 PM, Monday through Friday. No trucks in excess of two axles are allowed.
- E. Parking and storage areas: Off street parking shall be provided for at least two occupant-owned vehicles, plus one space for each non-resident employee, plus one space for a pick-up/delivery vehicle. All outdoor parking (other than occupant-owned vehicles reserved for private use), storage, loading and service areas shall be screened from abutters. There shall be no on-street parking. Temporary storage facilities are specifically prohibited. No trailers or cargo containers are permitted for use as temporary or permanent storage units.
- F. Vehicular turn-around space: Adequate turn-around space shall be provided so as to preclude vehicles' having to back out onto the public right-of-way.
- G. Traffic safety: The intersections of all driveways and public rights-of-way shall have an unobstructed All Season Sight Distance as recommended by the Town Road Agent or NH DOT as applicable.
- H. Nuisances: There shall be no odor, dust, fumes, vibrations, noise, glare, heat, gas, or flashing lights that are perceptible without instruments from the nearest public street, abutting residences, or, in the case of abutting undeveloped lots, from the center of said lots. Outdoor lighting shall be directed and shielded so that it is not directed off-premises.
- I. Septic discharge: The volume of septic discharges shall not exceed the design capacity of the system, and in no case exceed that of a four bedroom residence, as specified in guidelines promulgated by the NH Division of Environmental Services.
- J. Pollution: No pollution of the land, air or water shall result which is greater than, or of a different nature than, that which would be normally generated by a single household in a one-unit dwelling.
- K. Hazardous materials: An inventory of all hazardous materials utilized in the business and stored on the premises shall be submitted to the Planning Board and the Fire Chief. The inventory shall include the name, quantity, and type of storage facility for each material. The storage of radioactive materials is specifically prohibited.
- L. Storm water runoff: The business shall not cause erosion, nor increase the volume of surface water which leaves the property.

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- M. Visibility: Other than the sign(s) permitted elsewhere in this ordinance, there shall be no evidence of a non-residential land use visible from public rights-of-way or from abutting residences. Where considered appropriate by the Madbury Planning Board, screening shall be installed to Planning Board specifications.
- N. Aesthetics: The proposed land use and associated structures shall be consistent with the town's rural character and the character of the immediate area, as determined by the Madbury Planning Board. As viewed from public rights-of-way and from the abutting residences, the proposed business shall maintain the appearance of a residential or agricultural land use.

### **Section 9. Deleted<sup>1</sup>**

### **Section 10. Deleted**

### **Section 11. Compliance**

The Building Inspector shall monitor all conditional uses. The issuance of a Conditional Use Permit shall include, as a stipulation, the right of the Building Inspector to periodically enter the premises in order to ascertain compliance with the Performance Standards cited above.

### **Section 12. Permit Revocation**

If, in the opinion of the Board of Selectmen, non-residential uses are not in compliance with the Town's Performance Standards or with stipulations of the Conditional Use Permit, the Selectmen shall immediately revoke the Permit, and so notify the property owner. The property owner may then apply to the Planning Board for a new Conditional Use Permit.

### **Section 13. Transferability**

Conditional Use permits terminate upon a change in ownership of the land or business.

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## **Article VI Civic District**

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### **Section 1. District Boundaries**

The Civic District shall encompass several lots in the vicinity of the Madbury Town Hall, specifically: Tax Map 6, Lots 1, 2, 2A, 3, 4 and 4C; and Tax Map 7, Lots 3B, 13, 14 and 21.

### **Section 2. Uses Permitted**

Churches, schools, municipal buildings, cemeteries, memorial parks and public playgrounds.

### **Section 3. Minimum Dimensional Requirements**

The following minimum dimensional requirements apply in the Civic District:

- A. Minimum Lot Size: 80,000 square feet
- B. Road frontage: 200 feet
- C. Front yard setback: 50 feet
- D. Side and Rear yard setback: 15 feet
- E. Lot Depth: 150 feet

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<sup>1</sup> Sections 9,10 deleted March 2015

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# Madbury Zoning Ordinances

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## Article VII Commercial and Light Industrial Zone

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### Section 1. District Boundaries

The Commercial and Light Industry District shall encompass the following lots on Pudding Hill and along Knox Marsh Road: Map 3, Lots 47, 48, 49 and 50; Map 7, Lot 16; Map 9, Lots 1, 3, 4, 5, 5A, 6, 16C, 62, 63, 63A, 64 and 65.

### Section 2. Uses Permitted

- A. It is the intent of this zone to establish areas within the Town of Madbury wherein certain select industrial uses may be permitted under such conditions as shall minimize adverse effects upon adjacent properties. Any Commercial Enterprise wishing to locate within the Commercial and Light Industry District, and any existing Commercial Enterprise wishing to enlarge, intensify or undergo a change of use, shall require Planning Board approval under the Non-Residential Site Plan Review Regulations.
- B. No dwelling shall be allowed in this zone.
- C. Each business or industry within this zone shall be allowed one sign, which shall be on the same lot as is the business or industry.
- D. No sign shall be closer than 15 feet from any street or side lot line.
- E. Accessory signs shall be limited to twelve (12) square feet in area.
- F. All signs or accessory signs shall be subject to approval by the building inspector as to safety, size, placement, and relation to neighboring industries or businesses.

### Section 3. Minimum Lot Area and Yard Requirements

- A. Minimum Lot Size: 80,000 square feet
- B. Road frontage: 25 feet
- C. Setback from road: 50 feet
- D. Side and Rear Setback: 25 feet
- E. Lot Depth: 150 feet

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## Article VII-A Deleted

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Neighborhood Commercial Zone, Deleted, March 3, 2009

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## Article VIII Madbury Sand and Gravel Regulations

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### Section 1. General Provisions

- A. In pursuance of good civic design and for the purpose of preserving the topography of rural charm now attached to our town and preventing the hazards to safety and health for practices of conservation, the following provisions are hereby enacted.

## Madbury Zoning Ordinances

- B. For the purpose of these regulations, excavation shall mean the removal from the ground of soil, loam, sand, gravel, subsurface rock or other similar substances.
- C. The provisions of these regulations shall be inapplicable to:
  - 1. The construction of a wall, driveway, road, sewer or water line, fence, sidewalk or the landscape gardening of the property upon which excavation is taking place.
  - 2. The removal by a person of topsoil from one part of his land to another part of the same premises, when such removal is necessary as an accessory use or is made for the purpose of farming, landscaping or improving said property.
  - 3. Grading and filling where no topsoil, earth, sand, gravel, rock or other substance is removed from the premises.
  - 4. An excavation, which is made solely for the purpose of the construction of a structure upon and where the property is excavated.

### **Section 2. Permits**

- A. Before any excavation (except one to which these regulations are inapplicable, see SECTION 1. C) is commenced or any existing excavation is continued, the owner or lessee of the property shall obtain a written permit therefore from the Selectmen of the Town of Madbury, New Hampshire.
- B. The Selectmen shall issue said permit only after the Madbury Planning Board review and approval. The applicant shall submit the following to the Planning Board.
  - 1. An application (in such form as the Planning Board shall prescribe) which shall contain at least:
    - a. A written statement of the proposed work and the condition and final grades of the property after the work is completed and
    - b. The proposed dates of the commencement and estimated date of completion of the work.
  - 2. A survey or surveys prepared by a duly licensed engineer or land surveyor which surveys shall:
    - a. Be drawn at a scale of not more than 100 feet per inch.
    - b. Show the location and elevation of all existing and proposed streets, roads or highways on or adjoining the property; show existing and proposed drainage of the site; show details of regarding and re-vegetation of the site at the conclusion of operations;
    - c. Show the location and boundary dimensions of the portion of the property upon which it is proposed to excavate or to continue to excavate;
    - d. Show the existing contours and proposed new elevations of the area upon which the excavation is to be made and of the area surrounding it within 100 feet;
    - e. Set forth in figures the estimated acreage or square footage and the volume to be removed.
  - 3. Impact statement: An impact statement, which details the probable effects of that excavation, as well as baseline data from which to measure future impacts, on the following aspects of concern to the Town:
    - a. Vehicle traffic;
    - b. Increases in municipal costs;
    - c. Load on public utilities
    - d. Public safety;
    - e. Changes in property values;
    - f. Changes in surface drainage;
    - g. Impact on ground water;
    - h. Pollution of water or air;
    - i. Land erosion or loss of tree cover;

## Madbury Zoning Ordinances

- j. Disturbance to other aspects of natural ecology;
  - k. Impact on surrounding view;
  - l. Harmony with the character of the surrounding area;
  - m. Impact on town roads;
  - n. Statement of future land usage after completion of excavation;
  - o. Time estimation for completion of project;
  - p. Amount of material to be removed from the site;
  - q. Plans and data of reclamation of site after excavation;
  - r. Steps to minimize dust proliferation.
- 4. Proof that written notice of the excavation has been given to the holders of any mortgages on the property and, if the applicant is not the owner, proof that written notice of the excavation had been given to such owner and the owner has agreed to allow such excavation.
  - 5. A written statement from the Tax Collector of the Town of Madbury (on form to be furnished and prescribed by the Selectmen) certifying that all current taxes levied against the property have been paid in full and that there are no unreleased tax liens encumbering said property.
  - 6. The annual permit fee of fifty dollars (\$50.00) is to be payable in cash or by a check to the order of the Town of Madbury.
  - 7. At the discretion of the Board of Selectmen the equivalent of a surety company performance bond or a surety company performance bond written by a company licensed to do business in the State of New Hampshire, to the Town of Madbury in such amount as shown, in the reasonable judgment of the Selectmen, to be sufficient to insure full and faithful compliance with all of these regulations may be required. If no bond is required, a statement of the Board of Selectmen as to the reasons for the non-requirement shall be made and become a part of the public record. The excavator may not excavate below the final elevation as shown on the survey submitted without prior written approval of the Board of Selectmen. Should approval be given for excavation below the final elevation as shown on the survey submitted, the Board of Selectmen shall have the power to adjust the amount of bond required.
  - 8. A fee of one hundred dollars (\$100.00) to open a gravel bank is payable in cash or by a check payable to the order of the Town of Madbury.
- C. Permits shall expire one year from the date of issue. Permits shall be renewed on compliance with provisions of sections of Article VIII, provided, however, that additional maps and other data may be submitted only if such maps or other data would be markedly different from those already filed under the provisions of these regulations. The applicant shall submit evidence and proof of compliance with the initial plan submitted to the Board of Selectmen and shall be the burden of the applicant to demonstrate that they have complied with the provisions of the initial permit for possible renewal of the initial permit.
  - D. Any permit shall be revoked by the Madbury Board of Selectmen when there has been a violation of any provision of these regulations or violation of the conditions established for the individual permit, provided that notice of said violation has been given to the excavator together with an order to comply within a reasonable time, as determined by the Board of Selectmen and as set forth in said order, and the excavator has failed to comply. In the event that the excavator cannot be reached at the address provided in the initial application, a temporary revocation can occur until such time as the excavator can be located. In the event that the excavator cannot be located by mail or by reasonable notice, publication of revocation shall be made in a publication having circulation in the area in which the excavation is occurring.

## Madbury Zoning Ordinances

- E. Provisions of SECTION 2 shall not apply in the case of excavations from which less than 200 cubic yards of materials are excavated from a lot of record. All excavations other than for purpose of construction of buildings shall however require a letter of notification to the Board of Selectmen to include the name of the owner of the property, the excavator, the location of the excavation and the amount of the material removed or to be removed. The Board of Selectmen shall maintain a record of all notifications of excavation, however, they are not required to notify the abutters under this Paragraph.

### **Section 3. Regulations**

- A. No excavation shall be made:
1. Within fifty (50) feet from any property or road right-of-way line except as provided in Article VIII, SECTION 3B. (March 10, 1998)
  2. Below an elevation four (4) feet above the seasonal high water table as determined by a qualified soil scientist when the associated water supply well has not been operating for at least two weeks prior to the date of measurement.
  3. Where the excavation would substantially damage a known aquifer, as designated by the United States Geological Survey or other as may be identified per a hydro-geological analysis.
  4. When the excavation cannot receive required approvals from state or federal agencies, such as Alteration of Terrain or Wetland permits.
  5. Unless the final slope of the excavation will not be in excess of 2:1 (horizontal to vertical). (March 10, 1998)
  6. Unless adequate barricades, fences or earth berms shall be erected and maintained together with adequate provisions for prevention of flying dust and the accumulation of ground or surface water, unless adequate provision shall be made for the muffling of sound and the prevention or dissemination of dust, and unless provisions shall be made for such highway warning or similar signs as may be proper (also subject to the approval of the Planning Board).
  7. Unless the permittee agrees:
    - a. Should fill be required to achieve the finished grade as specified on application it shall be clean, non-burnable fill containing no garbage, refuse, offal or any deleterious or unwholesome matter.
    - b. To cover the sloped area with suitable mulch or an arable topsoil, so as to minimize soil erosion.
    - c. Excavator shall implement a planting plan in the 50-foot wide barrier to create a natural site barrier as is appropriate for the neighborhood. Said barrier should consist in general of coniferous type plantings set out in an offset growth pattern. Further, if any earth berming is utilized as protection or if required by the Planning Board said berm shall be topped by planting of an appropriate nature and maintained to insure their adequate growth.
- B. The operator of the sand and gravel extraction operation shall prepare for the Town an annual report documenting compliance with the requirements of this section.
- C. Pursuant to RSA 155-E:11, II the requirements of this section may be waived if the applicant demonstrates that such excavation will not adversely affect water quality. Written notice of such exception shall be recorded in the Registry of Deeds, and one copy filed with the NH Department of Environmental Services.
- D. In the interest of efficient land management, by written agreement, adjacent landowners already issued excavation permits may petition the Madbury Board of Selectmen to eliminate the 50 foot buffers along their shared boundaries. Said agreement shall be notarized and recorded with the Madbury Town Clerk. The submissions under Article VIII, SECTION 2. B

## Madbury Zoning Ordinances

shall be adjusted to reflect the scope of excavation. The Selectmen shall act for the interest of the Town in any agreement concerning town rights-of-way or roads in which the adjacent property owner seeks to modify said 50 foot buffer. The Madbury Board of Selectmen shall utilize the following criteria in determining approval of the property owner's request. The proposal:

1. must be appropriate to the specific location in the neighborhood;
  2. must not have a negative effect on the neighborhood;
  3. must not present a hazard to pedestrians or vehicles; and
  4. must not have a negative effect on the health and welfare of the general community.
- E. Sufficient amounts of topsoil shall be applied so that reseedling may be accomplished.
- F. Any permittee or agent thereof under a permit granted under the terms of this Regulation, who shall cause damage to any road or roads of the Town of Madbury, New Hampshire, shall be liable the cost of repairing said damage.
- G. Nothing herein contained shall be construed to forbid the creation of a lake or pond provided that adequate provision has been made for the run-off of water in such manner as will not injure any roads, highways, or abutting property and provided the proper approvals and permits are obtained from the State Wetlands Board.
- H. Existing active banks whose normal operations cease for more than thirty (30) consecutive days shall leave the slopes of the bank in such condition that they conform to the provisions of SECTION 3, A-2. Authority for the determination of cessation of operations shall reside with the Selectmen.
- I. Upon completion of excavation of the site, reclamation and reseedling of the site shall commence immediately and under no condition less than 30 days thereafter unless prior approval is granted by the Planning Board. The Planning Board may require reclamation and reseedling occur during the course of excavation of the site when a portion of the site has been completed but the whole site has not been completely excavated.

### **Section 4. Miscellaneous Provisions**

- A. In addition to all other legal and equitable remedies available to accomplish enforcement of these regulations, any person violating or assisting in the violation of any of the provisions hereof shall be fined not more than one hundred dollars (\$100.00) for each offense. Each day of violation shall be deemed a separate offense.
- B. Existing Gravel Banks:
- C. Gravel Bank operations in existence on March 11, 1986 will comply with all sections of Article VIII at the time of their annual renewal of permit.

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## **Article IX**

### **Wet Area Conservation Overlay District--WC**

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#### **Section 1. Purpose**

The purpose of this article is to implement Madbury's adopted Master Plan's first priority policy goal to "Protect and manage ...wetlands...for the benefit of present and future generations." and "Protect water resources in Madbury from contamination, depletion and disfigurement using watershed management principles." In support of these goals, this article will help to:

- A. Prevent the pollution of surface water and ground water by controlling the development of structures and land uses on naturally occurring wetlands.

## Madbury Zoning Ordinances

- B. Prevent the destruction of natural wetlands that provide flood protection and storm water storage, recharge of ground water supply, and augmentation of stream flow during dry periods.
- C. Protect presently existing natural wetland wildlife habitat.
- D. Prevent any inharmonious use of wetlands that would cause excessive or untimely expenses or environmental degradation to the Town.
- E. Accommodate those uses that can be appropriately and safely located in a wetland.

### **Section 2. District Boundaries**

The Wet Areas Conservation Overlay District includes all areas identified as wetland, as defined by the State, poorly drained and very poorly drained soils, and vernal pools. Poorly drained and very poorly drained soils are those areas identified in the publication, "Soil Survey of Strafford County, New Hampshire" issued March 1973, as updated. All pertinent notations, soil mapping unit designations and other information shown in the publication shall be as much a part of this Article as if the matters and things set forth by this document were fully described herein. This publication is on file with the Town Clerk, the Planning Board, and the Zoning Board of Adjustment. In addition other currently mapped general locations of wet area resources is shown on the Town of Madbury Wet Areas Conservation Overlay District Map and is a supplement to the Town of Madbury Zoning Map as amended. This map also is on file with the Town Clerk, the Planning Board, and the Zoning Board of Adjustment.

If a Wet Area Conservation Overlay District boundary is uncertain or contested, the boundary in question shall be determined by a New Hampshire certified wetland scientist or certified soil scientist, where appropriate, and acceptable to the Planning Board. The owner of the property where the boundary is in question shall pay for such determination.

### **Section 3. Applicability**

The Wet Areas Conservation Overlay District is an overlay district. The requirements of this article are in addition to those of the underlying zoning district. If requirements of this District and other applicable Districts are in conflict as applied to a specific plot, the more restrictive requirement shall apply.

The provisions of this Article shall apply to all wet areas and their adjacent upland buffer area, except the following:

- A. Isolated, non-tidal wet areas with a contiguous surface area of less than three thousand (3,000) square feet that are not vernal pools or are not associated with any surface water, drainage way, or other wet area, and
- B. Wet Areas associated with currently functioning and maintained, non-abandoned, man-made:
  - 1. Ditches and swales.
  - 2. Sedimentation and/or detention basins or ponds.
  - 3. Agricultural and irrigation ponds and swales.
  - 4. Fire ponds, cisterns, and related facilities.

### **Section 4. Permitted, Prohibited, And Limited And Regulated Uses**

#### **A. Permitted Uses**

The following land uses are permitted in the Wet Areas Conservation Overlay District:

- 1. Conservation areas and nature trails.
- 2. Open space in accordance with Madbury's Subdivision Regulations and other Articles of this Ordinance.
- 3. Wildlife habitat development and management.

## Madbury Zoning Ordinances

4. Water impoundment.
5. Construction of well water supplies.
6. Drainage ways such as streams, creeks, or other paths of normal runoff.
7. Parks and such recreation uses as are consistent with the Purpose of this Article.
8. Forestry.
9. Agriculture, including grazing, hay and silage production farming, truck gardening and harvesting of crops, but not including stock piling of manure.

### B. Prohibited Uses

The following land uses are prohibited in the Wet Areas Conservation Overlay District subject to performance standards in Section 6:

1. Erection of any structure.
2. Installation of an on-site wastewater treatment system.
3. Alteration of the surface configuration of the land by the addition of fill or dredging except in accordance with best management practices for agricultural land drainage provided such use is permitted in the underlying Land Use District.

### C. Limited and Regulated Uses

The following land uses are allowed in the Wet Areas Conservation Overlay District if the Planning Board approves a Conditional Use Permit in accordance with the provisions of Article IV, Section 9 of this ordinance:

1. Uses otherwise prohibited (e.g., driveway access or wetland crossing) only if they are found to be consistent with this ordinance, and do not have an adverse impact on the wet area as determined by a wetland scientist and concurred with by the Planning Board.
2. Any use that involves a change to a wet area that requires a state dredge and fill application in accordance with (RSA 483-A).

## **Section 5. Design and Development Standards**

- A. **Wet Area Buffer.** Wet areas shall be protected by adjacent undisturbed, naturally vegetated, contiguous upland buffers of at least twenty-five (25) feet from the reference line of the surface water or delineation of the wet area, except as otherwise permitted in this Article. The buffer shall not be mowed and will be allowed to re-establish naturally occurring vegetation. The application of fertilizers, pesticides, or herbicides within the buffer shall be prohibited except in conjunction with allowed agricultural activities.
- B. **Building and Septic Setback.** Any construction altering the surface configuration of the land including the installation of a wastewater treatment system shall be setback from the reference line of the surface water or delineation of the wet area by an amount that includes the wet area buffer as follows:
  1. Bogs, prime wet areas and rare and exemplary wet area communities: 75 feet.
  2. All other tidal wet areas: 75 feet.
  3. Vernal pools: 75 feet.
  4. All other non-tidal wet areas: 75 feet.
  5. Very Poorly Drained Soils 75 feet.
  6. Poorly Drained Soils 50 feet.
- C. **Septic Installation.**
  1. Any new wastewater treatment system, leach field or other sewage disposal system installed within a setback shall use Best Management Practices to protect the wet area from erosion and other considerations.
  2. The replacement of an existing septic system, leach field, or other sewage disposal system that is located within the required setback from the reference line of the surface water or delineation of the wet area shall comply with the required setback unless the

## Madbury Zoning Ordinances

Planning Board or Planning Board designee determines that such a location is not physically possible due to the shape or size of the lot and soil conditions. If the Planning Board or Planning Board designee determines that a replacement system must be located within the required wet area septic system setback, the system shall be located to provide the maximum setback possible as determined by the Planning Board or Planning Board designee and shall use the best available technology.

3. Any new or replacement system shall be maintained and be subject to inspection per Town requirements.
- D. Lot Size. Any new subdivision lot approved subsequent to adoption of this Article, shall have sufficient lot size to place a house, a state-approved septic system, where applicable, and a state-approved well, where applicable, without locating them in a wet area.
- E. Mitigation. Where the installation of a permitted use negatively impacts the wet area, the impact shall be mitigated per NH Department of Environmental Services rules.
- F. Application of Ordinance. Lands that may have been wet areas, but were filled under properly issued federal, state and local permits granted prior to the adoption of this Article, shall be judged according to the soils and flora existing at the time the application for building permit or subdivision is submitted.

### **Section 6. Performance Standards**

All wet areas uses shall not cause significant increases in surface or groundwater contamination by toxic or hazardous substances and such uses shall not cause or contribute to topsoil erosion or stream sedimentation.

### **Section 7. Administration**

- A. Applications for a building permit, subdivision and site plan approval shall locate and depict on the survey, subdivision plan or site plan all wet areas, unless this requirement is waived by a two-thirds majority of the Planning Board.
- B. The building inspector shall not issue a building permit unless construction activity conforms to the provisions of this article.
- C. The applicant shall agree to submit a performance security to the Planning Board and Board of Selectmen. The security shall be submitted in a form and amount, with surety and conditions satisfactory to the Planning Board and Selectmen, to ensure that the construction will be implemented in accordance with the approved plan. The security shall be submitted and approved prior to issuance of any permit authorizing construction.

### **Section 8. Conditional Use Permit Criteria and Procedures**

The Planning Board shall consider a conditional use permit only if:

- A. A wetland scientist has provided written evidence that there will be no adverse impact to the wet area.
- B. The applicant has addressed any recommendations provided by the Madbury Water Resources Board and the Madbury Conservation Commission.

# Madbury Zoning Ordinances

## Article IX-A Aquifer and Wellhead Protection Overlay District

### Section 1. Authority

The Town of Madbury hereby adopts this ordinance pursuant to the authority granted under RSA 674:16, in particular RSA 674:16, II and 674: 21 relative to innovative land use controls.

### Section 2. Purpose

The purpose of this article is to implement the adopted Town of Madbury Master Plan priority objective to: "Protect water resources in Madbury from contamination, depletion and disfigurement using watershed management principles. Act as stewards for municipal and regional water supplies located within the Oyster River, Bellamy River, and Little Bay watersheds."

Clean and abundant water from Madbury's ground water aquifers is necessary for the health, welfare, safety and prosperity of the Town and its surrounding area. Wells serving public water systems are critical resources. This article provides protections for these essential resources from risks associated with adverse land use and development.

### Section 3. District Boundaries

- A. The Aquifer and Wellhead Protection Overlay District includes all lands above stratified drift aquifers, and lands designated by the State as public water supply wellhead protection lands identified as follows:
  - 1. Lands above stratified drift aquifers are identified on the "US Geological Survey, Geohydrology and Water Quality of Stratified-Drift Aquifers in the Bellamy, Cocheco, and Salmon Falls River Basins, Southeastern New Hampshire Plates 2. 4 and 6 dated 1992."
  - 2. Lands for wellhead protection are identified on the State of New Hampshire, Department of Environmental Services, Wellhead Protection Areas Data Layer, as may be updated. These lands are depicted on the map entitled "Town of Madbury Master Plan, Water Resources" dated June 14, 2005 as amended, and the Town of Madbury Zoning Map as may be amended. These maps shall be on file at the Town Office.
- B. In addition the District includes all lands above the stratified drift aquifers where they have not been mapped, but may be identified as part of a site plan or subdivision plan review or other process.
- C. If an Aquifer and Wellhead Protection Overlay District boundary is uncertain or contested, the boundary in question shall be determined by a New Hampshire licensed Professional Engineer, hydrologist, geologist, or soil scientist acceptable to the Planning Board. The owner of the property where the boundary is in question shall bear the costs of such determination.

### Section 4. Applicability

- A. The Aquifer and Wellhead Protection Overlay District is an overlay district. The requirements of this article are in addition to those of the underlying zoning district. If requirements of this District and other applicable Districts are in conflict as applied to a specific plot, the more restrictive requirement shall apply.
- B. The provisions of this article shall apply to all land uses within the District Boundaries.
  - 1. Some uses are specifically permitted. These are uses that create little or no risk to wellhead areas.
  - 2. Some uses are limited or permitted only with Town oversight. These are uses that involve some risks. These risks can be minimized through site and facility design and careful use.
  - 3. Some uses are prohibited because they create unacceptable risks.

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- C. Site design and development requirements and performance standards in this article shall apply to all land use activities and development including additions and modifications to a site or structure within the District Boundaries, not just those requiring subdivision plan, or site plan approval, or building permits.

### **Section 5. Permitted, Prohibited and Limited and Regulated Uses**

#### **A. Permitted Uses.**

The following land uses are permitted in the Aquifer and Wellhead Protection Overlay District subject to the restrictions of the underlying district:

1. All land uses permitted in the applicable underlying zoning district, provided that they are:
  - a. not expressly prohibited in sub-section B below or
  - b. allowed as a Limited and Regulated Use as per subsection C below.
2. Town Transfer Station and associated operations on Pudding Hill Road.
3. Storage of less than 550 gallons of heating oil for on-premises use.
4. Any storage designed for, and containing, any liquid that is gaseous at atmospheric temperatures and pressures (example: propane).

#### **B. Prohibited Uses.**

The following land uses are prohibited in the Aquifer and Wellhead Protection Overlay District:

1. The development or operation of a hazardous waste disposal facility as defined under RSA 147-A.
2. Disposal or storage of solid waste, construction materials, vegetative debris except as part of the process of improving the subject parcel.
3. The development or operation of a solid waste landfill under RSA 149:M-9.
4. The development or operation of a wastewater or septage lagoon.
5. Open liquid waste pond.
6. Application of wastewater residuals as defined by NH DES Rules Wq Env-800-811.
7. The development or operation of a junkyard or waste salvage yard.
8. Motor vehicle service or repair shops, except as a customary uses designed to provide routine service to vehicles operated by the principal user.
9. The outdoor unenclosed storage of road salt or other deicing chemicals in bulk.
10. The development or operation of a snow dump.
11. The development or operation of a petroleum bulk plant or terminal.
12. The development or operation of gasoline stations.
13. Commercial animal feedlots.
14. Commercial storage of manure, fertilizers, herbicides, or other leachables, except for the temporary storage of such material when it is incidental to the principal use and stored in a manner that avoids leaching and runoff.

#### **C. Limited and Regulated Uses.**

1. The following land uses are allowed in the Aquifer and Wellhead Protection Overlay District, subject to restrictions in the underlying district, if the Planning Board approves a Conditional Use Permit. in accordance with Article IV, Section 9 of this Ordinance.
  - a. Storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds dry weight at any one time or exceeding reportable quantities under listed under 40 CFR 302, 7-1-05 edition or as amended.
  - b. Any use that will render impervious more than 15 percent or 2,500 square feet of any lot, whichever is greater.
  - c. Any activities that involve blasting of bedrock.
  - d. General service and repair shops, including but not limited to: furniture stripping, painting, and refinishing; photographic processing; printing; appliance and small engine

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- repair; boat repair, service and refinishing; refrigeration, heating, ventilating and air conditioning shops.
- e. Metalworking shops, including, but not limited to: machine shops; metal plating shops; heat treating shops; smelting shops; and jewelry making shops.
  - f. Manufacturing facilities, including but not limited to: electronics and chemical manufacturing, processing, and reclamation; paper, leather, plastic, fiberglass, rubber, silicon and glass making; pharmaceutical production; pesticide manufacturing; and chemical preservation of wood and wood products.
  - g. Receipt, processing and storage of ferrous and non-ferrous metals and related byproducts produced in the recycling of vehicles, appliances and other predominately metal items.
  - h. Laboratories and professional medical offices, including but not limited to: medical, dental, and veterinary offices; and research and analytical laboratories.
  - i. Cleaning services, including but not limited to: dry cleaner; laundromats; and car washes.
  - j. Storage of petroleum or related products in quantities greater than 550 gallons for on-premises use.
2. In granting a Conditional Use Permit the Planning Board must first determine:
    - a. The applicant has demonstrated the proposed use and design are consistent with the purpose of this Article:
    - b. That the proposed use is not a prohibited use (as listed in Section 5 B of this Article):  
and
    - c. Will be in compliance with the Performance Standards in Section 7 of this Article as well as all applicable local, state and federal requirements and the criteria of Article 4, Section 9, D of this ordinance.
  3. The Planning Board, at its discretion, may require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facilities and the future monitoring and/or periodic inspection of same required for compliance with the Performance Standards. Additionally, The Planning Board, at its discretion, may require routine monitoring and inspection activities to assure, confirm and document compliance with Performance Standards and other applicable provisions of this Article IX-A.

### **Section 6. Primary Wellhead Protection Area**

- A. The area within 400 feet of an identified public water supply wellhead is hereby designated as a Primary Wellhead Protection Area.
- B. Land use in this area is strictly limited to protect this critical water resource. The provisions of this section apply to these areas in addition to those for the Aquifer and Wellhead Protection Overlay District.
- C. The following land uses are permitted in the Primary Wellhead Protection Area. All other land uses are prohibited in these areas.
  1. Construction, operation, and maintenance of wells, dams and water conservation apparatus.
  2. Conservation, education and recreational activities that do not cause erosion or necessitate the application of chemicals.
  3. Maintenance and repair of any existing structure, provided that there is no increase in the area of impermeable surfaces.
  4. Town Transfer Station and operations on Pudding Hill Road.

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### **Section 7. Performance Standards**

- A. All uses within the Aquifer and Wellhead Protection Overlay District shall conform to the standards and practices delineated in the following documents on file with the Planning Board, unless this Ordinance specifies more strict standards:
  - 1. Manual of Best Management Practices for Agriculture in New Hampshire, NH Dept. of Agriculture, June 2011, or as amended.
  - 2. Best Management Practices to Control Nonpoint Source Pollution--A Guide for Citizens and Town Officials, NH DES, WD-03-42, January, 2004, or as amended.
  - 3. Best Management Practices, New Hampshire Code of Administrative Rules, Env-Wq 401, or as amended.
  - 4. State of New Hampshire Septage Management Rules, New Hampshire Code of Administrative Rules, Env-Wq 1600, or as amended
  - 5. State of New Hampshire Sludge Management Rules, New Hampshire Code of Administrative Rules, Env-Wq 800, or as amended.
  - 6. Best Management Practices for Forestry: Protecting New Hampshire's Water Quality, University of New Hampshire Cooperative Extension, 2005, or as amended.
  - 7. Pesticide Management Guidelines for Groundwater Protection, UNH Cooperative Extension, November 1992, or as amended.
  - 8. Manual of Best Management Practices--Biosolids, UNH Cooperative Extension, 1995, or as amended.
- B. For any use that will render impervious more than 15 percent or more than 2,500 square feet of any lot, a stormwater management plan shall be prepared. The stormwater management plan shall comply with New Hampshire Stormwater Manual Volumes 1-3, December 2008 (or as amended), NH Department of Environmental Services. Such plan shall address control of parking lot pollutants including but not limited to petroleum product residue.
- C. Design shall accommodate equipment failures and operational errors without environmental impact, including:
  - 1. Below ground level--removal and replacement of leaking parts, a leak detection system with monitoring, and an overflow protection system.
  - 2. Above ground level--liquid and leaching monitoring of primary containment systems, the replacement or repair and cleanup and/or repair of the impervious containment surface.
- D. All underground storage facilities shall conform to the requirements of DES Rules Env-Wm-1401 as revised.
- E. All regulated substances stored in containers with a capacity of five gallons or more must:
  - 1. be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains; and
  - 2. secured against unauthorized entry by means of a door and/or gate that is locked when authorized personnel are not present and must be inspected weekly by the facility owner.
- F. Outdoor storage areas for regulated substances, associated material or waste must be protected from exposure to precipitation and must be located at least 50 feet from surface water or storm drains, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems.
- G. Secondary containment must be provided for outdoor storage of regulated substances in regulated containers and the containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s).
- H. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another.
- I. Prior to any land disturbing activities, all inactive wells on the property, not in use or properly

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maintained at the time the plan is submitted, shall be considered abandoned and must be sealed in accordance with We 604 of the New Hampshire Water Well Board Rules.

- J. Blasting activities shall be planned and conducted to minimize groundwater contamination. Excavation activities should be planned and conducted to minimize adverse impacts to hydrology and the dewatering of nearby drinking water supply wells.
- K. All Limited and Regulated Uses as defined in Section 5 C of this Article shall also be subject to the following:
  - 1. Submission of an Environmental Protection Plan prepared by an appropriately licensed expert that:
    - a. Demonstrates conformance to DES rule ENV-Wq-401 "Best Management Practices for Groundwater Source Protection".
    - b. Specifies the amount and composition of any industrial or commercial waste that will be generated on-site and details the method for disposal of such waste outside of the Aquifer and Wellhead Protection Overlay District.
    - c. Provides description of a routine inspection and monitoring program.
  - 2. Submission of a Spill Prevention, Control and Countermeasure (SPCC) Plan when using regulated substances to the Madbury Fire Chief and the Madbury Planning Board. The Fire Chief shall determine whether the plan will prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods or fires that may cause large releases of regulated substances. It shall include:
    - a. Information consistent with *Developing Your Stormwater Pollution Prevention Plan: A Guide for Industrial Operators* (US EPA, Feb 2009 or as amended). The plan shall demonstrate that the use will:
      - (1) Meet minimum stormwater discharge setbacks between water supply wells and constructed stormwater practices as found within *the Innovative Land Use Planning Techniques: A Handbook for Sustainable Development, Section 2.1 Permanent (Post-Construction) Stormwater Management, (DES,2008 or later edition)*; and
      - (2) Maintain a minimum of four feet vertical separation between the bottom of a stormwater practice that infiltrates or filters stormwater and the average seasonal high water table as determined by a licensed hydrogeologist, soil scientist, engineer or other qualified professional as determined by the Planning Board.
    - b. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
    - c. Contact list and phone numbers for the facility response coordinator, cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted in case of a release to the environment.
    - d. A list, including amounts, of all regulated substances in use and locations of use and storage;
    - e. A prediction of the direction, rate of flow, and total quantity of regulated substance that could be released where experience indicates a potential for equipment failure.
    - f. A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.
    - g. Flood control:
      - (1) For all underground facilities including, but not limited to, a monitoring system and secondary standpipe above the 100-year flood control level, for monitoring and recovery.
      - (2) For above ground facilities, an impervious containment dike, above the 100-year flood level, capable of containing 100 percent of the primary containment facility with an overflow recovery catchment area (sump).
    - h. Fire control plans shall include:

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- (1) A safe fire fighting procedure.
- (2) A fire retarding system.
- (3) Provision for dealing safely with any other health and technical hazards that may be encountered by disaster control personnel in combating fire. Hazards to be considered are pipes, liquids, chemicals, or open flames in the immediate vicinity.
3. Documentation that the applicant has addressed any recommendations provided by the Madbury Water Resources Board, Madbury Conservation Commission and Madbury Fire Department.
4. The Planning Board may require additional independent hydrogeological study or other technical review and analysis of sites and applications. The costs of all such review and analysis shall be borne by the applicant.

### **Section 8. Administration**

- A. Routine monitoring and inspection activities required by the Conditional Use Permit shall be performed by the Selectmen's delegate at reasonable times with prior notice to the landowner. Spill Response Plans must be reviewed annually by the Selectmen's delegate. All properties within the Aquifer and Wellhead Protection Overlay District using or storing regulated substances in containers with a capacity of five or more gallons not subject to a Conditional Use Permit shall be subject to inspection under this Article.
- B. Annually the operator of a sand and gravel extraction operation shall prepare a report for the Town documenting compliance with the requirements of this Article. Pursuant to NH RSA 155-E:11, II the requirements of this section may be waived if the applicant demonstrates that such excavation will not adversely affect water quality and that written notice of such exception shall be recorded in the Registry of Deeds, and one copy filed with the NH Department of Environmental Services.
- C. The Building Inspector or Selectmen's delegate may require changes to facility designs and environmental protection plans to correct deficiencies in aquifer and wellhead protection.
- D. The Selectmen may revoke a Conditional Use Permit if they find risks to an aquifer or wellhead unacceptable.
- E. The owner and/or operator of a facility operating under a Conditional Use Permit shall report all incidents involving liquid or chemical material release to the Building Inspector or Selectmen's delegate.
- F. The Building Inspector or Selectmen's delegate will receive reports of spills, leaks or containment failures and investigate and make referrals as appropriate.
- G. For Conditional Use Permits requiring periodic monitoring or inspection, a narrative description of these requirements shall be recorded at the Registry of Deeds for Strafford County. The description shall comply with the requirements of NH RSA 478:4-a.

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## **Article X Shoreland Protection Overlay District**

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### **Section 1. Purpose**

The purpose of this article is to implement Madbury's adopted Master Plan's first priority goal: to "Protect water resources in Madbury from contamination, depletion and disfigurement using watershed management principles" and "Act as stewards for municipal and regional water supplies located within the Oyster River, Bellamy River, and Little Bay watersheds". In support of these goals, this article will help to:

Preserve and maintain surface water quality in Madbury.

Conserve and protect aquatic and terrestrial habitat associated with inter-tidal and riparian areas.

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Preserve and enhance those aesthetic values associated with the natural shoreline.  
Encourage those uses that can be appropriately located adjacent to the shorelines.

### **Section 2. District Boundaries**

The Shoreland Protection Overlay District is defined to include all areas of land within:

- A. 300 feet horizontal distance of the seasonal high water level of the Bellamy Reservoir,
- B. 100 feet horizontal distance of the seasonal high water level of the Bellamy and Oyster Rivers, and
- C. 75 feet horizontal distance of the seasonal high water level of all other brooks, streams, ponds and public water supplies (surface waters) within the Town which appear on U.S.G.S. 7.5' (scale 1:24,000) quadrangle maps for the Town of Madbury, as revised.
- D. The areas of land within 150 feet horizontal distance of the shoreline of Little Bay Estuary.
- E. The areas of land within 150 feet horizontal distance of the upland extent of any tidal wetlands adjacent to the Little Bay Estuary.

### **Section 3. Applicability**

The Shoreland Protection Overlay District is an overlay district. The requirements of this article are in addition to those of the underlying zoning district. If requirements of this District and other applicable Districts are in conflict as applied to a specific plot, the more restrictive requirement shall apply.

### **Section 4. Permitted, Prohibited and Limited and Regulated Uses**

#### **A. Permitted Uses (subject to Design and Performance standards)**

The following land uses are permitted in the Shoreland Protection Overlay District:

1. Conservation areas and nature trails.
2. Open space in accordance with Madbury's Subdivision Regulations and other sections of this Ordinance.
3. Wildlife habitat development and management.
4. Water impoundment's
5. Construction of well water supplies.
6. Drainage ways such as streams, creeks, or other paths of normal runoff.
7. Parks and such recreation uses as are consistent with the Purpose of this Article.
8. Agriculture, including grazing, hay and silage production, farming, truck gardening and harvesting of crops but not including stock piling of manure.

#### **B. Prohibited uses**

The following land uses are prohibited in the Shoreland Protection Overlay District:

1. The erection of any structure (except those explicitly permitted in this Section),
2. Installation of an on-site wastewater treatment system,
3. Alteration of the surface configuration of the land by the addition of fill or dredging except consistent with best management practices for agricultural and forestry land drainage.

#### **C. Limited and Regulated Uses**

1. The following land uses are allowed in the Shoreland Protection Overlay District subject to the limitations described for each:
  - a. The construction of fences, footbridges, catwalks, and wharves only, provided:
    - i. Said structures are constructed on untreated posts or pilings in order to permit the unobstructed flow of water;
    - ii. Structures do not obstruct navigation on tidal creeks;
    - iii. The natural contour of the shoreline is preserved; and,

## Madbury Zoning Ordinances

- iv. The Building Inspector has reviewed and approved the proposed construction.
  - b. Forestry and tree farming to include the construction of access roads for this purpose. Within this District the cutting of trees shall be limited to fifty percent (50%) of the basal area of all live trees two (2) inches in diameter (as measured four and one-half feet above the ground) and over, in a 20-year period. The remaining uncut trees shall be left well distributed throughout the area that was cut.
- 2. The following land uses are allowed in the Shoreland Protection Overlay District if the Planning Board approves a Conditional Use Permit in accordance with Article IV, Section 9 of this Ordinance:
  - a. Construction of roads and other access ways, underground pipelines, powerlines, and other transmission subject to these conditions:
    - i. The proposed construction is essential to the productive use of land that is not within the Shoreland Protection district;
    - ii. The proposed construction does not cross-tidal tributaries surrounded by very poorly drained soils.
    - iii. Within the Shoreland Protection District boundaries, no two crossings of any one brook or stream occur within 1,000 feet horizontally of each other.
    - iv. Design and construction methods will minimize detrimental impact upon the Shoreland.
    - v. The proposed construction methods for powerlines, pipelines or other transmission lines includes provisions for restoration of the site as nearly as possible to its original grade and condition.
    - vi. No alternative route that does not cross the shoreland or has less detrimental impact on the shoreland is feasible.
    - vii. Economic advantage alone is not reason for the proposed construction.
  - b. Uses otherwise prohibited (e.g., driveway access or wetland crossing) only if they are found to be consistent with this ordinance, and do not have an adverse impact on the wet area as determined by a Wetland Scientist and concurred with by the Planning Board.

### **Section 5. Design and Development Requirements**

A buffer strip of natural vegetation fifty (50) feet in width must be maintained between the area of use and any of these features:

- 1. The shoreline.
- 2. Upland extent of the tidal wetlands or the edge of a wetland.
- 3. Poorly or very poorly drained soil.

### **Section 6. Performance Standards**

All Shoreland Protection District uses must not cause significant increases in surface or groundwater contamination by toxic or hazardous substances and that such uses will not cause or contribute to topsoil erosion and stream sedimentation.

### **Section 7. Administration**

- A. Applications for a building permit, subdivision and site plan approval shall locate and depict on the survey, subdivision plan or site plan all shoreland, unless this requirement is waived by a two-thirds majority of the Planning Board.
- B. If a Shoreland Protection Overlay District boundary is uncertain or contested, the boundary in question shall be determined by a New Hampshire licensed Professional Engineer, hydrologist, geologist or soil scientist acceptable to the Planning Board. The owner of the property where the boundary is in question shall bear the costs of such determination.

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- C. Areas within the Shoreland Protection Overlay District may be considered as part of a minimum lot size required by the Zoning Ordinance and Subdivision Regulations of the Town of Madbury.
- D. The Planning Board may require the applicant to submit an environmental impact assessment when necessary to evaluate an application for use in this District. The cost of this assessment shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the costs of other special investigative studies and for the review of documents required by particular application.
- E. Any Shoreland altered in violation of this ordinance shall be restored at the expense of the violator(s) as provided by RSA 483-B:8.
- F. The applicant shall agree to submit a performance security to the Board of Selectmen. The Security shall be submitted in a form and amount, with surety and conditions satisfactory to the Selectmen, to ensure that the construction has been carried out in accordance with the approved design. The Security shall be submitted and approved prior to issuance of any permit authorizing construction.
- G. The hydric soils component of wetlands delineations shall be determined in accordance with the manual "Field Indicators for Identifying Hydric Soils in New England" (Version 2, July 1998 published by the New England Interstate Water Pollution Control Commission) or successor document. A certified wetland scientist shall conduct this delineation.

### **Section 8. Conditional Use Permit Criteria**

The Planning Board shall consider a Conditional Use Permit only if the applicant has addressed any recommendations provided by the Madbury Water Resources Board and the Madbury Conservation Commission.

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## **Article XI Telecommunication Facilities Overlay District**

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### **Section 1. Authority**

This Article is adopted by the Town of Madbury on March 10, 1998 in accordance with the authority as granted in NH RSA 674:16 and 674:21 procedurally under the guidance of 675:1, II.

### **Section 2. Purpose and Goals**

This Article is enacted in order to establish general guidelines for the site of wireless telecommunications facilities and to enhance and fulfill the following goals:

- A. Preserve the authority of the Town of Madbury to regulate and to provide for reasonable opportunity for the site of wireless telecommunications facilities.
- B. Minimize adverse impacts such facilities may create, including, but not limited to: impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values.
- C. Provide for co-location and minimal impact site options.
- D. Permit the construction of new towers only where all other reasonable opportunities have been exhausted

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- E. Require cooperation and co-location, to the greatest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town of Madbury.
- F. Provide continued maintenance and annual safety inspections for all facilities.
- G. Provide a mechanism for the removal of abandoned facilities that are no longer inspected for safety concerns and Code compliance.
- H. Provide for the removal or upgrade of facilities that are technologically outdated.

### **Section 3. Definitions**

- A. **Alternative Tower Structures:** Innovative setting techniques that include man-made trees, clock towers, bell steeples, light poles, and similar mounting structures that camouflage or conceal the presence of antennas or towers.
- B. **Antenna:** Any exterior apparatus designed for telephonic, radio, television, personal communication service, pager network, or any other communications through the sending and/ or receiving of electromagnetic waves of any bandwidth.
- C. **Carrier:** A company that provides wireless telecommunication services, sometimes referred to as a provider.
- D. **Co-location:** The use of a single ground mount by more than one carrier.
- E. **FAA:** The Federal Aviation Administration
- F. **FCC:** The Federal Communications Commission
- G. **Height:** Shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.
- H. **Personal Wireless Service:** The three types of services regulated by this Article as described in the Telecommunications Act of 1996 - Commercial mobile radio services, unlicensed wireless radio services, and common carrier wireless exchange services.
- I. **Security barrier:** A locked, impenetrable wall or fence that completely seals an area from unauthorized entry or trespass.
- J. **Tower:** Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular phone towers, alternative tower structures, and the like.
- K. **Wireless Telecommunications Facility:** A facility that provides personal wireless services, as defined by the Telecommunications Act. Wireless Telecommunications facilities include the tower or mount, the antenna, equipment shelter, security barrier, and any related structures and equipment.

### **Section 4. Site Standards**

- A. **General:** Uses deemed permitted uses under this Article are subject to review in accordance with SECTION 6. Conditional Use Permits and must comply with other applicable ordinances and regulations of Madbury, including Site Plan Review. Facilities constructed or installed in accordance with the provisions of this Article shall not be deemed to constitute a "non-conforming" use or structure, nor be deemed to be an "accessory use."
- B. **Use District:** Construction of wireless communications facilities is permitted in the Telecommunications Overlay District delineated as all areas of all zoning districts exclusive of

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the Shore-land Protection District, the Wetlands Conservation Overlay District, highly erodible soils, slopes greater than 15 percent, conservation lands and recreation areas.

### **Section 5. Applicability**

- A. This Article shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas. This application adopts the provisions and limitations as referenced in NH RSA 674:16, IV.
- B. Wireless telecommunications facilities shall not be considered infrastructure, essential services or public utilities. Sites for wireless telecommunications facilities is a use of land, and is addressed by this Article.

### **Section 6. Conditional Use Permits**

- A. General: All applicants for permits under this Article must apply to the Planning Board for "Site Plan Review and issuance of Conditional Use Permit" in accordance with Article IV, Section 9 of this Ordinance.
- B. Issuance of Conditional Use Permits: In approving an applicant's Site Plan and Conditional Use Permit, the Planning Board may impose conditions in order to minimize any adverse effect of the proposed tower on adjoining properties and preserve the intent of this Article.
  - 1. Procedure on Application: The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and NH RSA 676:4.
  - 2. Deleted<sup>1</sup>
  - 3. Factors considered in granting decisions:
    - a. height of proposed tower or other structure
    - b. proximity to development
    - c. nature of uses on adjacent and nearby properties
    - d. surrounding topography
    - e. surrounding tree coverage and foliage
    - f. design characteristics that have the effect of reducing or eliminating visual obtrusiveness
    - g. proposed ingress and egress to the site
    - h. availability of suitable existing towers, existing structures, and alternative site locations
    - i. visual impacts on view-sheds and ridgelines
    - j. placement of accessory structures
    - k. construction performance requirements in SECTION 7.
- C. Information Required: Each applicant requesting a Conditional Use Permit under this Article shall submit a plan in accordance with the Site Plan Review Regulations and further include a scaled elevation view, topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses (up to 500 feet away), and any other information deemed necessary by the Planning Board to assess compliance with this Article. Furthermore, the applicant shall submit the following prior to any approval by the Board:
  - 1. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency exposure guidelines.
  - 2. The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Protection Policy Act (NEPA) further referenced in applicable FCC rules. If an

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<sup>1</sup> March 2015

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Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal 30-day comment period, and the Town process, shall become part of the application requirements.

3. The applicant shall submit to the Planning Board an inventory of existing towers that are within the jurisdiction of the Town and those within two miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. Such information will become part of the public record.
4. An applicant proposing to build a new tower shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna, and describing the process by which other potential sites were eliminated.
5. An applicant proposing to build a new tower shall enter into an agreement with the Town that provides for the maximum allowance of co-location upon the new structure. Such statements shall become a Condition to any Approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Town, and grounds for a Denial.
6. The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Planning Board may have this information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with NH RSA 676:4:1(g).

D. Annual Renewal: The Conditional Use Permit shall be renewed upon submission of an inspection report evaluating the structural integrity of the facility, a certificate of insurance coverage for any injury or damage resulting from the facility and proof that bonding is current and satisfies SECTION 9. A letter of acknowledgement from the Board of Selectmen shall be deemed sufficient to constitute renewal. Issuance of a renewal permit shall not be predicated upon a new public hearing process unless the Board of Selectmen, at its discretion, find good cause not to renew upon the submission filed to meet the terms of this sub-section.

### **Section 7. Construction Performance Requirements**

- A. General: The guidelines in this section shall govern the location and construction of all towers, antennas and accessory buildings. However, the Planning Board, in the course of its Site Plan Review process, as a precondition for the granting or denial of a Conditional Use Permit, may waive these requirements in accordance with SECTION 8. Waivers, only if it determines that the goals of this Article are served thereby.
- B. Aesthetics and Lighting
  1. Towers shall either maintain a galvanized steel finish, subject to applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness.
  2. The design of the buildings and structures related to the wireless telecommunications facility shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend with the natural setting and environment. These buildings and structures shall also be subject to all other Site Plan Review requirements.
  3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is closely compatible with the color of the supporting structure, so as to make the antenna and related equipment as visually unobtrusive as possible.

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4. Wireless telecommunications facilities shall not be lighted, unless required by the FAA or other applicable authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
  5. Wireless telecommunications facilities shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind, except as required by the town for safety.
- C. Federal Requirements: All towers and antennas must meet or exceed current standards and regulations of the FAA, FCC, and any agency of the federal government with the authority to regulate wireless telecommunication facilities. If such standards and regulations are changed, then the owners of the towers and antennas governed by this Article shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring wireless telecommunication facilities into compliance with such revised standards and regulations shall constitute grounds for removal in accordance with SECTION 10 at the owner's expense through the execution of the posted security.
- D. Building Codes & Safety Standards: To ensure the structural integrity of towers and antennas, the owner shall ensure that it is maintained in compliance with applicable local building codes and the applicable standards that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a tower and/or antenna fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring the facility into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute abandonment and grounds for the removal of the tower, antenna, and all related structures in accordance with SECTION 9 of this Article at the owner's expense through the execution of the posted security.
- E. Additional Requirements for Wireless Telecommunications Facilities: These requirements shall supersede any and all other applicable standards found elsewhere in the Town Ordinances or Regulations that are less strict. For purposes of determining whether the installation of a tower or antenna complies with this Article and other applicable regulations, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots.
1. Setbacks and Separation
    - a. Setbacks for towers shall be at least twice the tower height, but not less than 125 feet, from abutting property lines, street or road rights-of-way, shore lands, ponds, streams, and non-related structures.
    - b. Tower guys, and accessory facilities must satisfy the minimum zoning district setback requirements.
    - c. Towers over 90 feet in height shall not be located within 1/4 mile of any existing tower that is over 90 feet in height.
  2. Height Requirements: The height of the tower and/or antenna shall not exceed 10' above the average tree canopy height within a 50-foot perimeter of the proposed security barrier. These requirements and limitations shall preempt all other height limitations as required by the Madbury Zoning Ordinance and shall apply only to wireless telecommunications facilities.
  3. Security Barrier: Wireless Telecommunication Facilities shall be enclosed by security barrier not less than six feet in height and equipped with an appropriate anti-climbing device.
  4. Landscaping:

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- a. Wireless Telecommunications Facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 15' wide outside the perimeter of the compound. Natural vegetation is preferred.
- b. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.
5. Hazardous material: No hazardous waste shall be discharged on the site of any Wireless Telecommunications Facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials.
6. Nuisances: There shall be no odor, dust, fumes, vibrations, noise, glare, heat, gas, or flashing lights that are perceptible without instruments from the nearest public street or abutting properties. Outdoor lighting shall be directed and shielded so that it is not directed off-premises.

### **Section 8. Waivers**

- A. General: Where the Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the Construction Performance Requirements of SECTION 7, causing the Applicant to be unduly burdened and not merely inconvenienced, the Planning Board may waive one or more of the requirements of said SECTION 7, provided that 2/3 of the entire board shall find that all of the following apply:
  1. The granting of the waiver will not be detrimental to the public safety, health or welfare, or injurious to other property and will promote the public interest.
  2. The waiver will not, in any manner, vary the provisions of the Madbury Zoning Ordinance, Master Plan or Official Maps.
  3. Such waiver(s) will substantially secure the objectives, standards and requirements of this Article.
  4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of the waiver.
- B. Conditions: In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objective of the standards or requirements of this Article.
- C. Procedures: A petition for any such waiver shall be submitted in writing by the applicant with the application for Board review. The petition shall fully state the grounds for the waiver and all of the facts relied upon by the applicant. Failure to submit petition in writing shall require an automatic denial.

### **Section 9. Bonding and Security and Insurance**

Recognizing the extremely hazardous situation presented by abandoned and unmonitored wireless telecommunications facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers, antennas, and accessory structures in the event that the facility is abandoned and the tower owner fails to remove the facility in accordance with SECTION 10. Bonding and surety shall be consistent with the provision in the Subdivision Regulations. Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering accident or damage, and shall require notice of cancellation to the Planning Board within 30 days of said notification.

### **Section 10. Removal of Abandoned Antennas and Towers**

The owner shall provide the Planning Board with a copy of any notice to the FCC of the intent to cease operations, within 30 days of said notification. Any antenna or tower that is not operated for

## **Madbury Zoning Ordinances**

a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove abandoned structures within 90 days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower.

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### **Article XII Driveway Regulations**

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In order to provide for the safe vehicular flow onto property and assure that such access does not cause a detrimental impact to an accepted road, a permit for driveway construction shall be required.

- A. Permit requirements shall be as provided in NH RSA 249:17 or as otherwise determined by the road agent.
- B. The road agent shall issue all driveway permits and approve construction. The applicant shall pay a fee of \$10 for each permit.
- C. No driveway, other than a shared driveway between adjoining lots, shall be located closer than fifteen (15) feet from the lot sideline.

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### **Article XIII Nonconforming Uses, Structures and Lots**

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#### **Section 1. Nonconforming Uses**

- A. Continuance: A nonconforming use may be continued although such use does not conform to current provisions of this Ordinance.
- B. Discontinued Use: Whenever a nonconforming use has been discontinued for more than one year for any reason, such nonconforming use shall not thereafter be re-established, and the future use of the property shall be in conformity with the provisions of this Ordinance.
- C. A non-conforming use may not be enlarged or changed except as a Special Exception by the Board of Adjustment in accordance with Article XV, SECTION 2 and following Site Plan approval by the Planning Board as required by Article XV, Section 2.B.1.

#### **Section 2. Nonconforming Structure**

Continuance: Any lawful nonconforming structure existing at the time of adoption of this Ordinance may be occupied, operated and maintained in a state of good repair.

#### **Section 3. Nonconforming Lots**

- A. A nonconforming lot, which has been developed with a structure, may be continued for the same use but no expansion of a structure which intensifies its use on a nonconforming lot, shall be allowed except as a Special Exception by the Board of Adjustment as provided in Article XV, SECTION 2. Intensification is any use that increases the demand on the designed septic system or that increases interior living spaces a.) by more than ten (10) percent of the original structure or b.) to more than 1,152 square feet total, whichever is greater.

## Madbury Zoning Ordinances

- B. Deleted.<sup>1</sup>
- C. When a structure on a nonconforming lot or a structure containing a nonconforming use is damaged by fire, flood, wind or act of God, such structure may be reconstructed, without enlargement, and used as before such damage, provided such reconstruction is begun within twelve months and is completed within two years after the date of the original damage.
- D. A separate nonconforming lot, which is recorded as a lot of record at the time of passage of this Ordinance may be used for a conforming use of the District, however, a Minimum Lot Size of eighty thousand (80,000) square feet is required for a two family dwelling.

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### Article XIV Enforcement

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#### **Section 1. Authority**

The Board of Selectmen is hereby given the power and authority to enforce the provisions of this Ordinance.

#### **Section 2. Administration**

The Town Building Inspector shall administer the provisions of the Ordinance and report violations to the Board of Selectmen.

#### **Section 3. Permit Issuance**

The Building Inspector shall issue any and all permits requested when such permit is in accordance with the provisions of this Ordinance.

#### **Section 4. Cause for Enforcement**

Upon any well-founded information that this Ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of this Ordinance.

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### Article XV Board of Adjustment

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#### **Section 1. Appointments**

Within thirty (30) days after the adoption of this Ordinance and thereafter as terms expire or vacancies occur, the Board of Selectmen shall make appointments to the Board of Adjustment of five (5) members conforming in duties to the provisions of RSA 674:33. Thereafter as terms expire or vacancies occur, the appointing authority shall be responsible for filling vacancies and maintaining full membership of the Board of Adjustment. The Board of Adjustment shall conform in membership and term of office to the provisions of RSA 674:33.

#### **Section 2. Grant of Authorities**

The Zoning Board of Adjustment shall have all the powers and authorities authorized by RSA 674:33 and 674:3-a. These include the power and authority to hear and decide appeals, grant variances and grant equitable waivers of dimension and to grant Special Exceptions subject to the provisions of this ordinance.

The Zoning Board of adjustment may:

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<sup>1</sup> Requirement for involuntary merger voided by RSA 674:39-a, in 2010.

## Madbury Zoning Ordinances

- A. Grant a Special Exception for the construction of a replacement dwelling while an existing dwelling remains occupied on the site, within the General Residential and Agricultural District.
  - 1. The Board of Adjustment shall consider impacts on abutters and safety of residents during construction.
  - 2. The Board of Adjustment may require a performance bond or other assurance of project completion be provided to the Selectmen when granting such a Special Exception.
  - 3. Such Special Exceptions shall specify an expiration date allowing adequate time for completion of construction but in no case for more than two year's duration.
  - 4. Special Exceptions granted under this provision do not imply authorization to expand, enlarge, change or intensify a non-conforming use. Such authorization(s) must be explicit and subject to relevant ordinance provisions.
  
- B. Grant a Special Exception in the General Residential and Agricultural District for the expansion, enlargement, change or intensification of a non-conforming use or lot as provided for in Article XIII, SECTION 1. C and SECTION 3.A if approval criteria are met and appropriate conditions are specified in the Special Exception approval.
  - 1. Criteria for Special Exception approval:
    - a. The Planning Board has granted Site Plan Review approval.
    - b. The Zoning Board has specifically found that the proposed use:
      - i. is compatible with the neighborhood;
      - ii. is appropriate to the specific location within the neighborhood;
      - iii. will not have a negative effect upon the neighborhood;
      - iv. does not present a hazard to pedestrians or vehicles;
      - v. does not have a negative effect on the health and welfare of the neighborhood and the general community;
      - vi. is consistent with the spirit of the ordinance.
  - 2. The Board of Adjustment shall impose any relevant conditions that it finds appropriate to ensure continuing compliance with the criteria for approval, and to safeguard the neighborhood or otherwise serve the purposes of the ordinance, including, but not being limited to, the following:
    - a. Yards larger in area or in any specified dimension than those required by the ordinance;
    - b. Screening of part or all of the premises of the proposed use by walls, fencing, or planting;
    - c. Modification of the design or appearance of any structure in the proposed use;
    - d. The establishment of adequate parking facilities to service the proposed use;
    - e. Limitation of the number of occupants or employees upon the premises, and restriction of the methods and time of operation and use, and of the size and extent of facilities;
    - f. Limitations upon the size, location and lighting of signs more restrictive than those otherwise imposed by this ordinance, including the prohibition of signs where, in the opinion of the Board, their display would be contrary to the spirit of the ordinance.

### **Section 3. Votes Required**

The concurring vote of at least three members of the Board shall be required to conduct any proper function of the Board.

### **Section 4. Appeals**

A decision on an appeal shall be rendered within fifteen (15) days following the hearing on that appeal. If more time is required to reach a decision, the appellant must be notified that the additional time is required for further study of the situation, but in no case shall the time exceed sixty (60) days following the hearing on that appeal.

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## **Madbury Zoning Ordinances**

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### **Article XVI Amendments**

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This Ordinance may be amended by a majority vote of any legal Town Meeting when such amendment is published in the Warrant calling for the meeting, pursuant to the provisions, NH RSA 675:6, as amended.

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### **Article XVII Penalty**

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Any violation of this Ordinance may be punishable asset forth in NH RSA 676:17 and as amended. A civil fine of not more than \$100.00 for each day that such violation is found by a court to continue after the conviction date or after the date on which the violator receives written notice from the municipality that he is in violation of any ordinance or regulation, whichever date is earlier.

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### **Article XVIII Saving Clause**

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If any court of competent authority shall hold any section, clause, provision, portion, or phrase of this Ordinance invalid or unconstitutional, such holding shall not affect, impair, or invalidate any other section, clause, provision, portion, or phrase of this Ordinance.

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### **Article XIX When Effective**

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This Ordinance shall take effect upon its passage.

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### **Article XX Repealed**

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Any and all zoning ordinances heretofore enacted by the Town of Madbury are hereby repealed.

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### **Article XXI Flood Hazard Area Overlay District**

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#### **Section 1. Title and Authority**

- A. The title of this District shall be the Town of Madbury Flood Hazard Area Overlay District.
- B. This ordinance is adopted under the authority granted pursuant to RSA 674:16, Grant of Power, and RSA 674:21, Innovative Land Use Controls, and 674:56, Floodplain Ordinances. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Madbury Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or

## Madbury Zoning Ordinances

regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

### **Section 2. Purpose**

The purpose of the Flood Hazard Area Overlay District is to protect the health and safety of residents by promoting the most appropriate use of land in Flood Hazard Areas, including:

- A. Uses which will result in no increase in base flood levels, flows, peaks or velocity.
- B. Uses which will not increase the potential for flood damage to the owner's property or that of others.
- C. Uses which will protect the benefits provided to the community by the floodplain.
- D. Uses which will result in no increase in erosion and/or sedimentation or other degradation of water quality.
- E. Uses which will not increase the risk to public safety, or to emergency personnel during flood events, or result in an increase in the cost of public services above costs incurred when not in a floodplain.

### **Section 3. District Boundaries**

- A. The provisions of the Flood Hazard Area Overlay District shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for Strafford County, NH" dated May 17, 2005 or as amended, together with the associated Flood Insurance Rate Maps dated May 17, 2005 or as amended, which are declared to be a part of this ordinance and are hereby incorporated by reference.

### **Section 4. Permits**

- A. All proposed development in the Flood Hazard Area Overlay District shall require a Building Permit and may require a Conditional Use Permit in accordance with Section 7 of this Article.
- B. The building inspector shall review all building permit applications for new construction, additions to existing structures, and substantial improvement to determine whether the proposed site is within the Flood Hazard Area Overlay District. If the site is determined to be within the Flood Hazard Area Overlay District, the building inspector shall review the application to ensure that the proposal is in compliance with all provisions of this ordinance.

### **Section 5. Permitted Uses**

The following uses are permitted provided they are consistent with the purposes of this ordinance and do not involve the placement, expansion or construction of permanent structures or other materials that could impede floodwaters or become flood-carried debris:

- A. Agricultural activities consistent with current best management practices as published by the New Hampshire Department of Agriculture.
- B. Forest Management consistent with current accepted best management practices as outlined in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, Department of Resources and Economic Development, April 1996, updated February 2000.
- C. Outdoor recreation, such as play areas, boating, hunting, fishing, trails for motorized or non-motorized use.
- D. Wildlife or fisheries management.
- E. Scientific research and educational activities.

## Madbury Zoning Ordinances

- F. Home occupations in existing residences consistent with Article V-B Home Occupations of this Zoning Ordinance
- G. Replacement water and sewer systems, including on-site systems, provided that the applicant shall provide the building inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.
- H. Substantial improvement not involving an addition.

### **Section 6. Prohibited Uses**

The following uses are not permitted in this district.

- A. New habitable buildings or other structures (except as allowed below by Special Exception).
- B. Processing or storage of excavation materials.
- C. Storage of construction or other materials which would impede flow of floodwaters.
- D. Filling.
- E. Grading that results in obstruction of flood flows or reduces flood storage capacity.
- F. Dumping.
- G. Wastewater or septage treatment facilities.
- H. Storage of floatable, or toxic, hazardous, or regulated substances. (Quantities typical for household use are permissible if stored 1 to 3 feet or more above base flood elevation.)
- I. Unsecured tanks.
- J. Junkyards.
- K. Landfills.
- L. Subdivision of land that would create a parcel that had no developable land outside the Flood Hazard area.

### **Section 7. Limited and Regulated Uses**

- A. The following land uses are allowed in the Flood Hazard Overlay District, subject to the restrictions of the underlying district, if the Planning Board approves a Conditional Use Permit. Application for Conditional Use Permit shall be submitted to the Planning Board before such use is started, increased, or changed and shall be in accordance with the provisions of Article IV, Section 9 of this Ordinance.
- B. Conditional Use Permit application is initiated by Site Plan Review application in accordance with Planning Board Site Plan Review regulations. The Planning Board may require independent technical review and analysis of sites and applications. The costs of all such review and analysis shall be borne by the applicant.
- C. The Planning Board may grant a Conditional Use Permit for the following uses if it determines, based on evidence provided by the applicant, that the use conforms to the standards provided in Sections 8 through 13 below and the purposes of the Flood Hazard Area Overlay District listed in Section 2 above:
  - 1. Water impoundments for the purpose of creating a water body for wildlife, fire safety, on-site detention of stormwater runoff and/or recreational uses.
  - 2. Water-dependent uses, such as docks, boathouses, and water powered projects.

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- D. The following additional uses may also be permitted by Conditional Use Permit if, in addition to meeting the conditions listed above, the use is not in a floodway:
1. Addition to existing structures, including manufactured homes, and replacement of manufactured homes.
  2. Accessory structures to existing primary uses when it is not practicable to construct the accessory structure on a portion of the lot outside of the Flood Hazard Area Overlay District.
  3. One principal building on a preexisting lot of record with no developable land outside Flood Hazard Area Overlay District.
  4. New or expanded septic systems if no suitable location exists for the system on a portion of the lot outside of the Flood Hazard Area Overlay District.
  5. Construction, repair or maintenance of streets, roads, and other access ways, including driveways, footpaths and bridges, and utility right-of-way easements, including power lines and pipe lines, wastewater collection facilities and pump stations, if essential to the productive use of land adjacent to the Flood Hazard Area Overlay District.
  6. Undertaking of a use not otherwise permitted in the Flood Hazard Area Overlay District, if it can be shown that such proposed use does not involve the erection of structures or filling and is in accordance with all of the purposes of the District as listed in Section 2, and those of the underlying zoning district.

### **Section 8. Construction Requirements**

The Building Inspector shall review all building permit applications for new construction, additions, or substantial improvements to determine whether proposed buildings will be reasonably safe from flooding. If a proposed building site is located in the Flood Hazard Area Overlay District, all new construction, additions, or substantial improvements shall:

- A. be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,
- B. be constructed with materials resistant to flood damage,
- C. be constructed by methods and practices that minimize flood damages,
- D. be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

### **Section 9. Water and Sewer Systems**

Where new or replacement water and sewer systems (including on-site systems) are proposed in the Flood Hazard Area Overlay District the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

### **Section 10. Certification of Floodproofing**

- A. For all new, expanded, or substantially improved structures located in the Flood Hazard Area Overlay District, the applicant shall furnish the following information to the Building Inspector:
  1. the as-built elevation (in relation to mean sea level) of the lowest floor (including basement) and include whether or not such structures contain a basement.
  2. if the structure has been floodproofed, the as-built elevation (in relation to mean sea level) to which the structure was floodproofed.

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3. any certification of floodproofing.

B. The Building Inspector shall maintain the aforementioned information for public inspection and shall furnish such information upon request.

### **Section 11. Other Permits**

The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U. S. C. 1334.

### **Section 12. Watercourses**

A. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Inspector, in addition to the copies required by the RSA 482-A: 3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau and the Madbury Conservation Commission.

B. The applicant shall submit to the Building Inspector certification provided by a registered professional engineer assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

C. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from federal, state, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

1. No encroachments, including fill, new construction, additions, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.

D. Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

### **Section 13. Design and Development Standards**

A. In Zone A the Building Inspector shall obtain, review, and reasonably utilize any base flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site plan approvals).

B. In Zone A where the base flood elevation is not available, the base flood elevation shall be at least two feet above the highest adjacent grade.

C. In Zone AE, refer to the base flood elevation data provided in the community's Flood Insurance Study and accompanying FIRM.

D. The Building Inspector's base flood elevation determination will be used as criteria for requiring in Zone A and AE that:

1. All new construction, additions, or substantial improvement of residential structures have the lowest floor (including basement) elevated to one foot or more above the base flood elevation.

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2. That all new construction, additions, or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the base flood elevation; or together with attendant utility and sanitary facilities, shall:
  - a. be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
  - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
  - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
3. All manufactured homes to be placed, expanded, or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot or more above the base flood elevation; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
4. All recreational vehicles placed on sites within Zone A and AE shall either:
  - a. be on the site for fewer than 180 consecutive days;
  - b. be fully licensed and ready for highway use; (A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.) or,
  - c. meet all standards of Section 8 of this ordinance and the elevation and anchoring requirements for "manufactured homes" in Section 13.B.3 of this section.
5. For all new construction, additions, and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:
  - a. the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;
  - b. the area is not a basement; and
  - c. shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
    - i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
    - ii. The bottom of all openings shall be no higher than one foot above grade.
    - iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

### **Section 14. Variances**

- A. Any order, requirement, decision or determination of the Building Inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- B. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I (b), the applicant shall have the burden of showing in addition to the usual variance standards under state law that:
  1. the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
  2. if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result; and
  3. the variance is the minimum necessary, considering the flood hazard, to afford relief.

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- C. The Zoning Board of Adjustment shall notify the applicant in writing that:
1. the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
  2. such construction below the base flood level increases risks to life and property.

Such notification shall be maintained by the Zoning Board of Adjustment with a record of all variance actions.

- D. The community shall:
1. maintain a record of all variance actions, including their justification for their issuance; and
  2. report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

### **Section 15. Definitions**

The following definitions shall apply only to this Flood Hazard Area Overlay District, and shall not be affected by the provisions of any other ordinance of the Town of Madbury.

- A. Addition: An expansion of a structure outside of the footprint of the original building.
- B. Base Flood: The flood having a one percent possibility of being equaled or exceeded in any given year.
- C. Base Flood Elevation: The water surface elevation having a one percent possibility of being equaled or exceeded in any given year.
- D. Basement: Any area of a building having its floor subgrade on all sides.
- E. Building - see "structure".
- F. Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operation or storage of equipment or materials.
- G. FEMA: The Federal Emergency Management Agency.
- H. Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:
1. the overflow of inland or tidal waters, or
  2. the unusual and rapid accumulation or runoff of surface waters from any source.
- I. Flood Insurance Rate Map (FIRM): An official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.
- J. Flood Insurance Study (FIS): An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.
- K. Floodplain or Flood-prone area: Any land area susceptible to being inundated by water from any source (see definition of "Flooding").
- L. Flood proofing: Any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.
- M. Floodway- see "Regulatory Floodway".  
Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

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- N. Historic Structure: Any structure that is:
1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
  4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
    - a. by an approved state program as determined by the Secretary of the Interior, or
    - b. directly by the Secretary of the Interior in states without approved programs.
- O. Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.
- P. Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.
- Q. Manufactured Home Park or Subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- R. Mean Sea Level: The National Geodetic Vertical Datum of 1929, North American Vertical Datum of 1988 or other to which base flood elevations shown on a community's Flood Insurance Rate Maps are referenced.
- S. New construction means, for the purposes of determining insurance rates, structures for which the start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
- T. Recreational Vehicle is defined as:
1. built on a single chassis;
  2. 400 square feet or less when measured at the largest horizontal projection;
  3. designed to be self-propelled or permanently towable by a light duty truck; and
  4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
- U. Regulatory floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.
- V. Special flood hazard area means an area having flood, mudslide, and/or flood-related erosion hazards, and shown on a FIRM as zone A and AE.

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- W. Start of Construction: Includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as Dwelling Units or part of the main structure.
- X. Structure: means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
- Y. Substantial damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- Z. Substantial Improvement: Any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal:
1. the appraised value prior to the start of the initial repair or improvement, or
  2. in the case of damage, the value of the structure prior to the damage occurring.
- For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures that have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".
- AA. Violation: The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under Section 10 or Section 13.B.2 of this ordinance is presumed to be in violation until such time as that documentation is provided.
- BB. Water Surface Elevation: The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum of 1988 (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.