

**Conditional Use Permits**  
**New Section to be added to the Madbury Zoning Ordinance as a new  
Section 9 of Article IV: General Provisions.**

---

**ARTICLE IV: GENERAL CONDITIONS.**

...

**SECTION 9: CONDITIONAL USE PERMITS**

**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.

**Proposed Zoning Ordinance change for March 2015 warrant  
Public Hearing handout, Jan 19, 2015**

---

- 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.

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:

- a. Run with the lot, building, structure or use and shall not be affected by changes in ownership.
- b. Terminate twelve (12) months from the date of authorization if the authorized use has not begun:
  - 1) Unless otherwise *specified* in the conditions of approval; or
  - 2) 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**

**Proposed Zoning Ordinance change for March 2015 warrant  
Public Hearing handout, Jan 19, 2015**

---

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.

---

Related changes are made in several sections of the ordinance that  
require conditional use permits.

---

## Article V-B Home Occupations

---

### 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. ~~Level I Home Occupations shall be allowed without obtaining a Conditional Use Permit.~~~~deleted~~
- B. All other Home Occupations shall be defined as Level II and shall require a Conditional Use Permit issued by the Madbury Planning Board in accordance with the provisions of Article IV, Section 9 of this Ordinance, using Performance Standards as described in Section 8. G through L of this Article. ~~as authorized by the applicable NH RSA.~~

### 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. ~~The application fee for a Conditional Use Permit shall be \$50.~~

### Section 4. ~~GRAND-FATHERED STATUS~~ Deleted

~~Any land use which was lawfully established prior to the adoption of this Article may continue in the same manner and to the same extent without securing a Conditional Use Permit.~~

### Section 5. ~~EXPANSION OF USE~~ Deleted

~~Prior to the expansion of, or change in, any use as permitted in this Article, a Conditional Use Permit from the Planning Board shall be required. This requirement shall also apply to those uses that previously required a Conditional Use Permit or are "grand-fathered" by the terms of this Article.~~

### Section 6. ~~PERMITTED LOCATIONS~~ Deleted

~~All Home Occupations and other land uses subject to Conditional Use Permit provisions of this ordinance shall be restricted to the Residential and Agricultural District.~~

**Proposed Zoning Ordinance change for March 2015 warrant  
Public Hearing handout, Jan 19, 2015**

---

**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:**

**Section 9. DELETED<sup>1</sup>**

~~The burden of proof for satisfying the Performance Standards cited above shall rest with the applicant, and not with the Planning Board.~~

**Section 10. DELETED**

~~The Planning Board may attach such stipulations to the issuance of a Conditional Use Permit, which, in the judgment of the Planning Board, serves to protect the interests of abutters and of the Town.~~

---

**A. Article IX  
Wet Area Conservation Overlay District--WC**

---

**Section 4. ~~PERMITTED AND, PROHIBITED USES~~ PERMITTED, PROHIBITED, AND LIMITED AND REGULATED USES**

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:**

---

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

---

**Section 5. PERMITTED, PROHIBITED AND LIMITED AND REGULATED USES**

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.** ~~Application for Conditional Use Permit shall be submitted to the Planning Board before such use is started, increased, or changed.~~

...

2. In granting a Conditional Use Permit the Planning Board must first determine:
  - a. ...
  - b. ...
  - 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.**

---

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

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

---

**Section 4. ~~PERMITTED AND PROHIBITED USES~~ PERMITTED, PROHIBITED AND LIMITED AND REGULATED USES**

C. Limited and Regulated Uses

1. ...
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](#):

---

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

---

**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](#). ~~Applications shall be accompanied by the information required in this section and a total application fee of \$750.00 per site.~~
- 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. ~~All decisions shall be rendered in writing, and a Denial shall be in writing and based upon substantial evidence contained in the written record.~~ Deleted<sup>2</sup>

---

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

---

**Section 8. PERMITS**

- A. All proposed development in the Flood Hazard Area Overlay District shall require a ~~permit~~ Building Permit and may require a Conditional Use Permit [in accordance with Section 7 of this Article](#).

**Section 7. LIMITED AND REGULATED USES**

- B. 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](#).