

Conditional Use Permits

**Proposed Zoning Revisions—Madbury Zoning Ordinance
January 6, 2015**

Revised Zoning Section Language to Ensure Consistency with the Newly Proposed Article IV, Section 9--Conditional Use Permits (CUP). This newly proposed section describes the Authority, Purpose and Procedures to obtain a CUP and applies to all instances where a CUP is required in the Zoning Ordinance.

In order for the remainder of the Zoning Ordinance to be consistent with this new section, revisions are required in each of the Articles providing for a CUP. Below are the Articles that will be affected.

- Article V-8; Home Occupations
- Article IX; Wet Areas Overlay
- Article IX-A; Aquifer and Wellhead Protection
- Article X; Shoreland Protection
- Article XI Telecommunications
- Article XXI; Flood Hazard Area Overlay District

Below are the proposed changes. The most extensive proposed changes are to Article V-B, Home Occupations. The changes in the remaining sections are relatively minor, primarily for clarification purposes. Only relevant sections of the Articles are included. Where existing zoning language is deleted, the words will contain a strikethrough. Proposed additions are shaded in yellow.

**Article V-B
Home Occupations**

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.

- A. 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 5.** (Previously 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.~~
- 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 5. 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**~~

~~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**~~

~~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**~~

~~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.~~

Section 4. (New Section #) 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 5. (New Section #) 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**:

1. 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.
2. Employees: No more than two non-resident employees shall be working on the premises at any one time.
3. 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.

4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. Storm water runoff: The business shall not cause erosion, nor increase the volume of surface water which leaves the property.
13. 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.
14. 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. BURDEN OF PROOF~~

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

~~Section 10. STIPULATIONS~~

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.

Section 6. (New Section #) 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 7. (New Section #) 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.~~

Article IX
Wet Area Conservation Overlay District--WC

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:

Section 2. DISTRCT BOUNDARIES

Section 3. APPLICABILITY

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

- A. Permitted Uses
- B. Prohibited 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:

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 6. PERFORMANCE STNADARDS

Section 7. ADMINISTRATION

Section 8. CONDITONAL USE PERMIT CRITERIA AND PROCEDURES

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

Change paragraph letter from D and E to A and B.

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

Section 1. AUTHORITY

Section 2. PURPOSE

Section 3. DISTRCT BOUNDARIES

Section 4. APPLICABILITY

Section 5. PERMITTED, PROHIBITED AND LIMITED AND REGULATED USES

- A. Permitted Uses.
- B. Prohibited 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. 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.**
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Article X

Shoreland Protection Overlay District

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:

Section 2. DISTRICT BOUNDARIES

Section 3. APPLICABILITY

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

- A. Permitted Uses (subject to Design and Performance standards)
 - B. Prohibited uses
 - 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:
Etc.
 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, power lines, 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. Etc.
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**Article XI
Telecommunication Facilities Overlay District**

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

Section 3. DEFINITIONS

Section 4. SITE STANDARDS

Section 5. APPLICABILITY

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.~~
 - 2. **(New 2)** Factors considered in granting decisions:
 - a. height of proposed tower or other structure
 - b. etc.

Note: Remainder of Article—Sections 7 through 10-- is unchanged.

**Article XXI
Flood Hazard Area Overlay District**

Section 1. TITLE AND AUTHORITY

1. The title of this District shall be the Town of Madbury Flood Hazard Area Overlay District
2. Etc.

Section 2. PURPOSE

Section 3. DISTRICT BOUNDARIES

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, etc.

Section 5. PERMITTED USES

Section 6. PROHIBITED USES

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 etc.
- C. *No changes*
- D. *No changes*

Sections 8 through 15—No additional changes for the CUP Permit.

Note: There are additional changes to this Article as proposed by the Planning Board to be consistent with FEMA requirements.