

# TOWN OF MADISON



## ZONING ORDINANCE 2022

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# **ZONING ORDINANCE MADISON, NEW HAMPSHIRE**

**As of March 8, 2011**

## **ARTICLE I: GENERAL PROVISIONS**

### **1.1 Purpose.**

This ordinance and its regulations as herein set forth are for the purpose of promoting public health, safety, general welfare, and the natural beauty of the environment which provides the primary basis for the unique character of the Town area and its residents. It also regulates the conservation of natural resources, stabilizing the value of the land and its improvements within the Town, and encouraging uses that are in harmony, visually and aesthetically, with rural living, in accordance with the provisions of RSA Chapter 674, 16-21. This zoning ordinance, by application and provision of State Law, seeks to protect existing property owners against a new use nearby which may be incompatible or undesirable and also damaging to existing owner's present property by lowering its desirability and value. All present uses may continue.

### **1.2 Title, Effective Date and Amendments.**

This ordinance shall be known and may be cited as The Zoning Ordinance, Madison, New Hampshire and is hereinafter referred to as "This Ordinance." This Ordinance shall take effect upon its passage and may thereafter be amended by the voters by petition or otherwise in accordance with New Hampshire Revised Statutes Annotated.

### **1.3 Existing, Non-conforming Uses.**

- A. Any existing lots of record at the time of passage of this Ordinance, March 1987, but not conforming to present minimum lot size, minimum frontage requirements, or minimum dimensional requirements, shall have the right to continue in their present use indefinitely, as well as being used for any other conforming use for the district in which it is located, so long as sufficient off-street parking for any such proposed use is provided within the property boundaries. Undeveloped nonconforming lots may be developed with any use permissible in the zoning district without compliance with minimum lot size, frontage or dimensional requirements, so long as sufficient off-street parking for any such proposed use is provided within the property boundaries; provided however that lots whose sole frontage is upon a Class VI or private road not shown on a plan approved by the planning board must first successfully complete the permit process as set forth in RSA 674:41. No such lot may be permitted to be further subdivided or otherwise made less conforming in nature.
- B. Any structure existing at the time of the original passage of this Ordinance, March 1987, which does not conform to the maximum height limitations and /or minimum setbacks, shall have the right to continue indefinitely or may be demolished and reconstructed within one (1) year.  
Legally established structures, which do not conform to present setback

requirements, may be expanded in size, provided the addition or expansion complies with current setback requirements, or:

The setbacks to the expanded structure are not less than the non-conforming setbacks to the original structure; and

The expanded structure is no closer than the existing non-conforming structure to the high-water line; and

The expanded structure is no taller above sea level than the highest roofline of the existing structure;

Any such expansion shall be limited in size to a total of fifty-percent (50%) of the square foot area of the first floor footprint of the existing structure as of March 2007, not including decks, chimneys, etc.

- C. Any land use to the extent existing at the time of the passage of This Ordinance, but not conforming thereto, shall have the privilege of continuing in such use indefinitely or re-establishing in such use within one (1) year of any discontinuance.
- D. In order to preserve the rural character of the district, businesses existing in the rural residential district at the time of This Ordinance shall be able to expand the size of their structures provided that adequate vehicular access and off street parking for the business is provided within the bounds of the property boundaries. Any expansion of non conforming commercial business structures in the Village District Zone shall be required to meet the commercial setback requirements of one hundred (100) feet from the center lines of the roadways and fifty (50) feet from all other property boundaries.

#### **1.4 Zoning Map.**

There shall be a zoning map of the Town of Madison that is available and on display which clearly sets forth the exact location of the boundaries of the authorized zoning districts; a reference map is attached hereto as Appendix B. The zoning map entitled "Zoning Map, Town of Madison, New Hampshire" as may be amended, together with all explanatory matter thereon is hereby declared a part of This Ordinance, but the District Boundaries as defined in Article III shall be controlling.

#### **1.5 Definitions.**

As used in This Ordinance, those terms in Appendix A shall have the meanings as indicated.

## ARTICLE II. ADMINISTRATION AND ENFORCEMENT

### 2.1 Enforcement; Violations and Penalties.

It shall be the duty of the Board of Selectmen or its designated Building Inspector to:

- A. Generally administer and enforce the provisions of This Ordinance. The Board of Selectmen shall administer This Ordinance literally and shall not have the power to permit any use of land or buildings which is not in conformance with This Ordinance. Variances and exceptions may only be approved or granted as required by law by the Zoning Board of Adjustment.
- B. Issue a zoning permit for the change of use to any permitted activity (land or building) or from one use to another upon written application for said zoning permit. Such a zoning permit may be a prerequisite to any subdivision approval, site plan approval or building permit issuance.
- C. A non-refundable fee shall be paid to the Town with each application for building permit as listed in the building permit fee schedule as that schedule may be amended by the Board of Selectmen from time to time.
- D. Issue a certificate of compliance upon completion of any new structure and prior to use of any building or structure within the Town of Madison, upon inspection, to ensure the same was completed and constructed in accordance with the terms of This Ordinance.
- E. Initiate immediate steps for enforcement of This Ordinance, upon well-founded information of any violation thereof, by issuing due notice to cease and desist such violation and taking such necessary and other action as may be permitted by statute for both criminal and civil enforcement of the same including, but not limited to, seeking a civil fine of \$275 per day for first offenses for each day the violation continues after the owner has been notified of that violation and \$550 per day for subsequent violations. Failure by the Selectmen to not initiate enforcement under This Ordinance will not constitute a waiver of the Town's right to take such action.
- F. Upon instituting appropriate action in the name of the Town to prevent, restrain, correct or abate any violation of This Ordinance, collect all costs and reasonable attorney's fees as actually expended in pursuing its action as permitted by State statute.

### 2.2 Zoning Board of Adjustment (ZBA)

- A. **Creation.** Within thirty (30) days after the adoption of This Ordinance and thereafter as terms expire or vacancies occur, the Board of Selectmen shall appoint a Zoning Board of Adjustment consisting of five (5) members whose duties, terms, and powers shall conform to the provisions of State statute. Thereafter, as terms expire or vacancies occur, the appointing authority shall be responsible for filling vacancies and maintaining membership of the Zoning Board of Adjustment. The Zoning Board of Adjustment shall elect its own chairman yearly or at such other intervals as may be necessary.

**B. Powers and Duties.** The Zoning Board of Adjustment shall have such powers and duties as set forth in RSA 674:33 including:

1. To hear and decide appeals, if it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and
2. Authorize upon appeal in specific cases such variance from the terms of the zoning ordinance as will not be contrary to the public interest if, owing to special conditions, a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done; and
3. In appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules as contained in the ordinance.

**C. Appeals from a Decision by the Board of Adjustment.** An appeal from a decision by the Board of Adjustment may be taken by any person aggrieved or any officer or board of the municipality affected by such decision in the matters prescribed by RSA 677:2 et seq.

### **2.3 Compliance Required.**

All buildings and all lands within the Town of Madison shall hereafter be used, laid out, constructed or altered only in conformity with the permitted uses and requirements for the districts in which they are located.

### **2.4 Conditional Use Permit:**

**A. Purpose:** Conditional Use Permits as herein provided for shall be deemed to be permitted uses in their respective zones, subject to the satisfaction of the requirements and standards of this Ordinance. All such cases are hereby declared to possess characteristics of such unique and special form that each specific use shall be considered as an individual case. The applicant shall bear the burden of persuasion, through the introduction of sufficient evidence that the development, if completed as proposed, will comply with this ordinance and will satisfy the specific requirements for the use contained in the ordinance.

**B. Authority:** Wherever a conditional use is authorized by this ordinance, the authority to administer or grant Conditional Use Permits shall be vested in the Planning Board.

**C. Standards:** Before the Planning Board considers the approval of an application for a Conditional Use Permit, the applicant shall prove to the satisfaction of the Planning Board that all the following conditions have been met:

1. That the property in question is in conformance with the dimensional requirements of the zone and that the proposed use is consistent with the Madison Master Plan.
2. That the proposal meets the purposes of the ordinance under which the application is proposed.
3. That there will be no significant adverse impacts resulting from the proposed use upon the public health, safety, and general welfare of the neighborhood and the Town of Madison.
4. That the proposed use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or inappropriate lighting than any use of the property permitted under the existing zoning district ordinances.
5. That the proposed use will not adversely affect the ground water resources of the Town of Madison.

**D. Conditions of Approval:** The Planning Board may attach such conditions to its approval as are reasonable, necessary, and appropriate. All Conditional Use Permit uses are hereby declared to have special characteristics that shall be considered on a case-by-case basis.

**E. Limits on a Conditional Use Permit**

1. Substantial construction must commence within one (1) year of the Planning Board approval of the Conditional Use Permit and Site Plan Approval.
2. If construction is not commenced within this period, the Conditional Use Permit may be extended for up to one (1) additional year upon approval of the Madison Planning Board. If construction is not commenced within this extended permit the Conditional Use Permit is declared null and void.

## **ARTICLE III: DISTRICT BOUNDARIES**

### **3.1 Rural Residential (RR) District.**

All areas not designated to be in the Commercial District, Village District, or Eidelweiss Residential District, shall be in the Rural Residential District.

### **3.2 Commercial (C) District.**

The Commercial District shall extend to the area along the north side of Route 16 bordered by the Albany town line to the west, north, and east; and

to the properties of record as of March 2010 with lot frontage on the south side of Route 16 to the rear property line; and

to the properties of record as of March 2010 with lot frontage on the east side of Route 113 to the rear property line, starting at the southerly boundary of Map 207 Lot 001 running northward to the Albany town line; and

six hundred (600) feet from the center line of the road on the west side of Route 113 at the southerly boundary of Map 110 Lot 001 running northward to the Albany town line; and

six hundred (600) feet in both directions from the center line of Route 153; and

a parcel bounded on the south by the center line of Ossipee Lake Road, on the west by the Tamworth town line, on the north by the center line of NH Route 41, on the west by Map 262, Lot 003 and a line 100 feet westerly of the center line of West Branch Brook.

### **3.3 Village (V) District.**

The Village District shall extend six hundred (600) feet on each side of Route 113 as it runs easterly from a point perpendicular and opposite the common boundary of Map 118, Lots 012 and 013 to a point perpendicular and opposite the common boundary of Map 233, Lots 089 and 090.

### **3.4 Wetlands Conservation (WC) District .**

All water resources, wildlife habitats and wetlands within the Town, such as but not restricted to Davis Pond, Pequawket Brook, Upper Pequawket Pond drainage north to the Town line, and Durgin Pond, Durgin Brook and Cooks Pond drainage into Silver Lake.

The Wetlands Conservation District is superimposed over all other zoning districts and to the extent its regulations are more restrictive they shall apply.

### **3.5 The Eidelweiss Residential (ER) District**

The Eidelweiss Residential District encompasses a land area of approximately 1100 acres, more or less, bounded by Route 113 on the west starting at the SW

corner of Map 112, Lot 029 and proceeding along the east side of Route 113 to the NW corner of Map 102, Lot 007. The boundary then runs easterly to the SW corner of Map 101, Lot 015 then NE to the NE corner of Lot No. 039 on Map 206 then southerly to the SW corner of Map 206, Lot 071, then easterly to the NE corner of reserved Lot 061 on Map 206. The boundary then runs southerly to the NW shore of Pea Porridge Pond Map 105, Lot 076, then follows the westerly and SW shore to the NE corner of Map 107, Lot 009. The boundary then runs southerly to the SE corner of Map 107, Lot 083 then westerly to the NW corner of lot No. 005 on Map 214 then southerly to the SE corner of Map 21, Lot 026. The boundary then runs westerly to the NW corner of Map 114, Lot 074, southerly to the SE corner of map 113, Lot 106, then westerly following Lots No 106, reserved 107, 108, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122 on Map 113, then westerly to Route 113, the point of origin.

### **3.6 Groundwater Protection District**

The Groundwater Protection District is an overlay district and includes within its boundaries the Wellhead Protection Areas and Stratified Drift Aquifers shown on the map entitled "Drinking Water Resources and Potential Contamination Sources for the Town of Madison" dated April 8, 1999, by NHDES.

## ARTICLE IV: DISTRICT REGULATIONS

### 4.1 Applicability of Article.

The following land uses are hereby permitted for each district and the following requirements are applicable to each district as indicated.

### 4.2 Rural Residential District

**A. Permitted Uses** .The following uses shall apply to the Rural Residential District. It shall be mainly a district of farms, residences & woodlands.

1. Farms, including all land, buildings, or structures associated with the farming activity as defined by RSA 21:34-a.
2. Woodlots.
3. Single family houses with accessory buildings and outbuildings.
4. Multiple housing (cluster housing; townhouses, condominiums, apartments) as regulated by subdivision regulations with a minimum of two (2) acres of contiguous land for each dwelling unit.
5. Home Occupations.

**B. Special Exceptions** .The following uses in keeping with Rural Residential shall be permitted if the Zoning Board of Adjustment, after a public hearing and due notice to the abutters and having determined that the following conditions have been met, finds approval to be appropriate. Approval of the ZBA does not constitute exemption from site plan review.

Other Uses:

1. Churches and other public buildings.
2. Professional offices.
3. Nursing homes.
4. Medical centers.
5. Private schools.
6. Day care facilities.
7. Lodging House (Bed and Breakfast) facilities.
8. Conference center facilities.
9. Stables and riding academies.

10. Vehicular repair facilities, offering repair and maintenance services for automobiles and trucks, shall also be allowed by special exception

provided that such uses: are screened from direct view from State and Town roads; are located on the same parcel as the residence of the owner of the facility; have a maximum of three (3) employees; and the parcel of land proposed for such use is three (3) or more acres in size.

Conditions to be met:

1. The operation and appearance are compatible and not offensive, injurious, or a nuisance to its neighborhood and abutters and will not substantially impact the value of the abutting properties.
2. The facility will not create traffic or other safety hazard.
3. Minimum setbacks for Professional Offices and Bed and Breakfast facilities shall meet the setback requirements of 5.9 A and C. Other uses shall meet the setback requirements of 5.9 B and C.
4. Adequate on-site parking shall be provided.

#### **4.3 Commercial District**

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

1. Any commercial use, subject to site plan review.
2. Permitted uses as allowed in the Rural Residential District.

#### **4.4 Village District**

**A. Permitted Uses** .Any lot may be used as permitted in the Rural Residential District.

**B. Special Exceptions** .In order to protect existing property owners in the Village District and abutting property owners in the Rural Residential District, the following uses shall be permitted if the Zoning Board of Adjustment, after a public hearing and due notice to the abutters and having determined that the following conditions have been met, finds approval to be appropriate. Approval of the ZBA does not constitute exemption from site plan review, if such review is required by the planning board.

Other Uses:

Special exceptions listed in 4.2 B, as well as service retail businesses such as:

1. Retail stores and shops

2. Restaurants
3. Inns
4. Office buildings
5. Banking facilities

Conditions to be met:

1. The proposed use and its operation is compatible with the surrounding neighborhood and the land and use of its abutters and will not substantially impact the value of the abutting properties.
2. The proposed use is architecturally compatible with the surrounding properties.
3. The proposed use is not offensive, injurious or a nuisance to its abutters or its neighborhood.
4. Traffic access to and from the proposed use will not create a safety hazard or alter the character of the immediate neighborhood.
5. Sufficient on-site parking shall be provided to service the proposed use
6. Minimum setbacks for the proposed uses shall be in accordance with 5.9 B and C.

#### **4.5 Wetland Conservation District.**

**A. Permitted Uses.** It shall be unlawful for any individual, partnership, corporation, association, or any other organization of persons, to dam, fill, dredge, drain, cut, clear, interfere, or construct, assemble or erect any structure other than those minimum structures associated with the support of bridges on a wetland.

**B. Request for Determination of Wetlands.** All individuals, etc, desiring to dam, fill, dredge, drain, cut, clear or construct, assemble or erect any structure shall file a Request for Wetland Determination with the Office of the Selectmen. The Selectmen shall, by their next regular meeting, render a decision finding the location of the proposed work to either be or not be wetland and, if so, identify the appropriate classification of the wetland involved.

**C. Buffers to Wetlands.** The purpose of a wetland buffer is to preserve the fragile ecology of plant and animal species that inhabit wetlands. The Town of Madison recognizes the need to regulate the building of structures and the designing of septic systems that may cause permanent damage to wetlands. In addition, the wetland buffer will reduce the chance of pollution of surface waters and groundwater. The wetland buffer shall consist of undisturbed land in accordance with the following regulations, the only exception would be for

driveway crossings.

**TABLE OF WETLAND BUFFERS**

All dimensions are given in feet.

- A. Buffers to prime Wetlands
- B. Buffers to streams, lakes, ponds, very poorly drained soils, bogs
- C. Buffers to vernal ponds and other wetlands, 0.25 acres or larger
- D. Buffers to other wetlands, less than 0.25 acres

A	B	C	D	Uses and Activities
150	75	75	75	On-site waste disposal systems for 1-2 family dwellings
150	125	125	125	On-site waste disposal systems for all other uses
150	75	50	30	Buildings and parking lots
200	200	200	20	Underground chemical and fuel tanks

The wetland buffer shall consist of ungraded and undisturbed land.

Where an existing use within the setback is destroyed or in need of extensive repair, it may be rebuilt provided that such rebuilding is completed within one year of the event causing destruction; the new or rebuilt use shall not extend further into the wetland or setback area than the original use. The buffer shall consist of natural vegetation. All construction, forestry and agricultural activities within one hundred feet (100') of any wetland shall be undertaken with special care to avoid erosion and siltation into the wetlands.

**4.6 Eidelweiss Residential District.**

**A. Permitted Uses.** It shall be primarily a district of single family residences and accessory buildings. One dwelling unit shall be the maximum allowable on any one lot and in any one building. Other permitted uses include home occupations, churches and public buildings. Business, commercial enterprises and agricultural uses are prohibited.

**B. Road Buffer Area Established: Clear Cutting Prohibited:**

In the Eidelweiss Residential District, no more than 50 percent of the basal area of trees and vegetation shall be cut or otherwise felled, leaving a well distributed stand of healthy, growing trees within:

- 1. 35 feet of the center of any public road, i.e. 15 feet within the property line and
- 2.. 10 feet within all other property lines.

Notwithstanding the forgoing, trees and other vegetation may be cleared from the buffer area bordering a public road for a width not to exceed thirty five feet to provide driveway and utility access to the lot.

The Zoning Board of Adjustment is authorized to permit cleared frontage in the

buffer area greater than thirty five feet by special exception, provided the applicant demonstrates that the additional cleared width is required because:

1. Safe access to and from the property is not otherwise possible; and/or
2. Utility services to the lot cannot otherwise reasonably be provided and maintained; and/or
3. A plan is provided that new vegetation; i.e. lawn, shrubbery, ornamental trees, change of tree type, will be planted within a six-month period from the commencement of construction.

## ARTICLE V: OTHER REGULATIONS

### 5.1 Signs.

- A. A sign shall be located on the premises of the use, product, service or activity to which such sign relates except as otherwise provided in this section.
- B. There shall be no more than one primary sign on the premises of the use, product, service, or activity to which the signs relate, no greater than twenty-five (25) square feet in area.
- C. Appendage signs are permitted as long as there shall be no more than a total of forty (40) square feet of primary sign and appendage signs.
- D. Identifying directional signs made up of individual panels, each panel no larger than six (6) inches by forty-eight (48) inches, may be erected at street or road intersections to direct the public to any property or business. No single property or business may erect more than one such panel at any single corner or at an intersection. If such signs are erected on public property, permission must be obtained from the Selectmen.
- E. Flashing or moving signs shall not be permitted. Permitted signs may be lighted by continuous illumination either internally or externally by a source of light not visible to motorists or abutters. For this purpose, the source of light shall include all transparent or translucent surfaces or arc lights, incandescent and fluorescent lamps, and/or lights producing illumination by electrical discharge in gases or vapors.
- F. The following shall not be included in the application of this section:
  1. Signs not exceeding six (6) square feet in area and bearing only property numbers, postal box numbers, names of occupants of the premises or other non-commercial identification.
  2. Flags or insignia of any government.
  3. Legal notices, no trespassing signs, identification, information, or directional signs erected or required by governmental bodies or by local service and philanthropic organizations.
  4. Traditional clocks having moving hands or dials.
  5. Signs erected for an election, primary, or referendum, provided they are erected in accordance with State of New Hampshire law, if applicable, or if not applicable, erected no sooner than twelve (12) weeks before the date of the election, primary, or referendum and removed no later than one (1) week after that date.
  6. Signs which primarily convey an ideological, political, social, cultural and/or religious message and are not conjunctively or concurrently used with a commercial advertising message on the same sign.

7. Temporary construction signs erected or posted on the site of any construction project, limited to two (2) signs no larger than sixteen (16) square feet in area and removed upon completion of the project.
8. Temporary signs advertising special events in the Town of Madison limited to fifteen (15) days and removed within seven (7) days after the event.
9. Temporary signs not to exceed six (6) square feet in area advertising the premises for sale or rent, but limited to one (1) sign for each agent for each street or road the property abut.

## **5.2 Eidelweiss Residential District Sign Regulation.**

A. In order to avoid sign blight which may result from numerous permanent signs erected within the village district, outdoor signs are prohibited within the Eidelweiss Residential District, except that each property may have one outdoor sign (not exceeding six square feet in area) which serves to indicate owner's identification, as well as one of the following signs at any given time:

1. Temporary construction signs erected or posted on the site of any construction project. Such signs are limited to sixteen (16) square feet in area and must be removed upon completion of the project.
2. Temporary signs not to exceed six (6) square feet in area advertising the premises for sale or rent. Such signs must be removed upon the sale or rental of the property.

B. In addition, each property may display one sign erected for any special event, such as an election, primary, or referendum, provided it is erected in accordance with State of New Hampshire law, if applicable, or if not applicable, erected no sooner than eight (8) weeks before the date of the event and removed no later than one (1) week after that date.

C. This ordinance shall not limit the display of signs from inside the structure or dwelling.

## **5.3 Air and Water Quality.**

No use will be permitted in the Town of Madison that will be obnoxious, or offensive by reason of the production or admission of dust, odor, smoke, refuse matter, fumes, noise, vibration or similar conditions, where that is detrimental or injurious to the comfort, peace, and enjoyment, health, or safety of the community or the immediate neighborhood, or leading to its disturbance or annoyance, or particularly interfering with the air or water quality of the community.

## **5.4 Junk Yards and/or Dumps.**

No land or water area in Madison may be used as a junk yard or storage place for more than one uninspected vehicle, ( i.e. no current New Hampshire inspection sticker), unusable machinery, scrap metal or any other materials the accumulation of which is detrimental or injurious to the neighborhood. No land or water area in Eidelweiss Residential Zone may be used as a junk yard or storage place for more than one uninspected vehicle, ( i.e. no current New Hampshire inspection sticker), unusable machinery, scrap metal or any other materials the accumulation of which is detrimental or injurious to the neighborhood.

**5.5 Height Limitations.**

In no instance shall any structure be over two and one-half (2½ ) stories high or thirty-six (36) feet in height including stacks. This measurement shall be the height above ground level (AGL) from the average grade of a site to the highest point of a structure. Exceptions to this rule are church steeples, antennas, flag poles, or masts, or as otherwise noted in the ordinance.

**5.6 Minimum Lot Size.**

The minimum lot size in all districts shall be two (2) acres. Sufficient off-street parking must be provided within property boundaries for all districts. Sufficient off-street parking for any proposed use must be provided within the property boundaries of any lot in any district. Slopes in excess of 33% may not be included in the area used to satisfy the minimum lot size requirement.

**5.7 Minimum Frontage.**

- A. Road frontage requirements. Every lot shall have a minimum frontage of two hundred (200) feet upon either a:
  - 1. State Highway; or
  - 2. Private road shown on a plat approved by the Planning Board; or
  - 3. Class V or better road.
  
- B. Lots located on Class VI roads. Lots having at least two hundred (200) feet of frontage on a Class VI road may, upon successful completion of the permit process as set forth in RSA 674:41, be developed with one structure or use. Subdivision of lots whose sole access or frontage is on a Class VI road shall not be permitted.
  
- C. Shore frontage Requirements. Every lot abutting a lake or pond shall have a minimum shore frontage of two hundred (200) feet, measured in a straight line between the points of intersection of the side lot lines with the shore line at a mean high-water mark.

**5.8 Shorelines.**

The natural shoreline of any watercourse or standing body of water shall not be disturbed, altered or added to, with the exception of a fifteen (15) foot section of shoreline for a recreation beach area, which section shall not extend more than five (5) feet into the water beyond the high water mark. Alteration of shorelines shall be governed by State Law requiring Dredge and Fill permits from the Wetlands Board.

**5.9 Minimum Setbacks.**

Except as otherwise provided, setbacks will be measured from the center line of any road or right-of-way, property line, and the mean high water mark at a water course or body of water to the nearest portion or part of any building or any other structure. Signs are exempt from the provisions of this paragraph other than regulated by their own provisions above. The following setback requirements are established:

- A. All structures and buildings within the Rural Residential and Village districts shall be set back a minimum of seventy-five (75) feet from the center line of the

roadways other than culs-de-sac, and a minimum of twenty-five (25) feet from all other property boundaries. Structures on lots fronting on culs-de-sac shall be set back a minimum of fifty (50) feet from the road right of way boundary.

- B. All structures and buildings within the Commercial district shall be set back a minimum of one hundred (100) feet from the center line of the roadway and a minimum of fifty (50) feet from all other property boundaries.
- C. Any residential building or structure with the exception of wharves, piers, docks, or bridges will be set back a minimum of seventy-five (75) feet from the mean high water mark of any water course or standing body of water.
- D. In the case of a corner lot, i.e., two sides fronting on different roadways, the minimum setback of 5.9 A and 5.9 B will be imposed as if the lot abuts only one roadway, with the roadway side being that which the front of the building faces. If a building is designed so that it faces both roadways, then both roadways will be considered as such for setback purposes.
- E. A dwelling unit in the Eidelweiss Residential district, owing to the nature of the terrain, shall be set back a minimum of sixty-five (65) feet from the center line of the roadway, twenty-five (25) feet from side lot lines and forty (40) feet from rear lot line.
- F. An accessory building in the Eidelweiss Residential district shall be a minimum of sixty-five (65) feet from the center line of the roadway, twenty (20) feet from a lot line, and may not be closer than five (5) feet to a dwelling unit. An accessory building shall not be used for residential purposes.
- G. A building permit will not be issued in the Eidelweiss Residential district unless the application is accompanied by a boundary plan certified by a N.H. Licensed land surveyor who will also confirm that the boundary corner pins have been set. Accessory buildings of less than one hundred twenty (120) square feet are exempt from this section, but must meet boundary line setbacks.
- H. Any commercial building or structure with the exception of wharves, piers, docks or bridges will be setback a minimum of seventy five (75) feet from the mean high water mark of any water course or standing body of water.
- I. In the Eidelweiss Residential District, any structure or building with the exception of docks shall be setback a minimum of seventy-five (75) feet from the mean high-water mark of any water course or standing water body. Any septic system shall be setback a minimum of seventy five (75) feet from the mean high water mark of any water course or standing water body.
- J. Any driveway shall be set back a minimum of fifteen (15) feet from any property line.

#### **5.10 Manufactured Housing.**

Manufactured housing as defined in RSA 674:31 is permitted within the Rural Residential, Village and Commercial districts on any individual lot but only those lots which comply in all respects, except non-conforming lots of record, with

all minimum requirements of size, frontage, and setbacks, and must be connected to a sewer system and a water source, both meeting minimum local and State of New Hampshire standards as applicable and then promulgated.

In Madison mobile homes and trailers are limited to the rural residential and commercial zone. Mobile homes and trailers which are to be placed on any lot, and mobile homes and trailers which are intended to replace older mobile homes will be no more than 10 years old from the date of application

Mobile homes and trailers are not permitted in the Edelweiss Residential District. Modular housing must meet the following conditions:

- A. For reasons of health, welfare and safety, the manufactured housing unit must be certified as meeting federal HUD standards and NHPUC Energy Code Certification Standards.
- B. Each lot upon which a manufactured housing unit is to be placed must comply with all regulations in This Ordinance applicable to single family dwellings, including State standards for septic systems.

**5.11 Hazardous and Dilapidated Structures.**

No owner or occupant of any land shall permit a hazardous or dilapidated structure (or hazardous excavation as defined in RSA 155-B:13), which, because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment, constitutes a fire hazard or a hazard to public safety or health, to continue uncorrected. The Selectmen, in all such instances, shall institute enforcement procedures as permitted in RSA Chapter 155-B no later than one year from the date such a condition is first reported.

**5.12 Outdoor Wood-Fired Hydronic Heaters**

The use and installation of Outdoor Wood-Fired Hydronic Heaters shall be governed by the provisions of RSA 125-R.

## ARTICLE VI: WIRELESS TELECOMMUNICATIONS FACILITIES

### 6.1 Purpose and Intent.

The purpose of this Ordinance is to preserve the authority of the Town of Madison to regulate and provide opportunity for the siting of wireless telecommunications facilities while keeping, first and foremost, the scenic quality of the Town consistent with its Master Plan. The rural and environmental qualities are to be preserved also. The intent and goal of this ordinance is to permit wireless telecommunications facilities in the Town of Madison and to:

- A. Reduce adverse impacts on scenic vistas.
- B. Reduce adverse impacts on environmentally sensitive areas, historically significant locations, health and safety by injurious accidents to persons and property, and prosperity through protection of property values.
- C. Promote co-location and minimal impact siting to the highest extent possible.
- D. Permit construction of new towers only where all other reasonable opportunities have been exhausted.
- E. Require use of existing structures whenever possible.
- F. Encourage personal wireless telecommunications services to provide a blanket of coverage for the Town of Madison, not just nearby corridors, incorporating the goals listed above.

### 6.2 Applicability.

The terms of this Ordinance and the Site Plan Review Regulations shall apply to all personal wireless telecommunications facilities proposed to be located on property owned by the Town of Madison, on privately owned property and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property to a carrier.

- A. All applications are subject to approval by the Planning Board in accordance with the terms of this Ordinance and Site Plan Review Regulations.
- B. All requests for a variance must go before the Zoning Board of Adjustment.

### 6.3 District Regulations.

- A. Location: Wireless telecommunications facilities shall be permitted in all Zoning Districts, except as restricted by this Ordinance. Applicants seeking approval for a wireless telecommunications facility shall first evaluate existing structures for the siting of the facility. Only after finding that there are no suitable existing structures, shall a provider propose a new ground mounted facility.
- B. Existing Structures Policy: Wireless telecommunications facilities shall be located on existing structures including, but not limited to, buildings, water towers, existing telecommunications facilities, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of

those structures.

- C. Existing Structures Burden of Proof: The applicant shall have the burden of proving that there are no existing structures that are suitable to locate its wireless telecommunications facility. To meet that burden, the applicant shall take all the following actions to the extent applicable:
  - 1. The applicant shall submit to the Planning Board a list of all contacts made with owners of potential sites regarding the availability of potential space for a wireless telecommunications facility. If the Planning Board informs the applicant that additional existing structures may be satisfactory, the applicant shall contact the property owner(s) of those structures.
  - 2. The applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Post Office shall be provided for each owner of existing structures who was contacted.
  - 3. If the applicant claims that a structure is not capable of physically supporting a wireless telecommunications facility, this claim must be certified by an independent licensed professional structural engineer hired by the Town of Madison and paid for by the applicant.
- D. Ground Mounted Facilities Policy: If the applicant demonstrates that it is not feasible to locate on an existing structure, ground mounted telecommunications facilities shall be designed so as to be camouflaged to the greatest extent possible, including, but not limited to use of compatible building materials and colors, screening, landscaping, and placement within trees.
- E. Locations for Ground Mounted Facilities - Ground mounted wireless telecommunications facilities shall be prohibited from:
  - 1. Zoned Village Districts
  - 2. Historical Districts
  - 3. Within 100 feet of Town or State roads
  - 4. Within 250 feet of a scenic road or sitting in a manner which is readily visible from a scenic road.

#### **6.4 Use Regulations.**

Wireless telecommunications facilities shall require a building permit in all cases and may be permitted as follows:

- A. Existing Tower Structures: Subject to the issuance of a building permit that includes review by the Planning Board, which review shall be limited to determining that the height of the mount is not increased, a security barrier exists, the area of the security barrier is not increased and the sitting is consistent with the standards set forth at Section 6.6. Carriers may locate a

wireless telecommunications facility on any guyed tower, lattice tower, mast or monopole in existence prior to the adoption of the Ordinance, or on any wireless telecommunications facility previously approved under the provisions of this Ordinance so long as the co-location complies with the approved site plan. This provision applies only so long as height of the mount is not increased, a security barrier already exists and the area of the security barrier is not increased. Otherwise, full site plan review is required.

- B. Reconstruction of Existing Tower Structures: An existing guyed tower, lattice tower, mast or monopole, including all antennas, in existence prior to the adoption of this ordinance may be constructed with a maximum twenty (20) foot increase in height so as to maximize collocation so long as the standards of this ordinance are met and so long as this twenty (20) foot increase in height does not cause a facility previously existing to exceed the tree canopy by more than ten (10) feet in height. The Planning Board will consider a fifteen (15) foot extension provided the applicant can demonstrate the technical necessity of such extension beyond the ten (10) foot height (25 foot maximum) and provided that the performance and design standards of Section 6.6 are met. The mount shall be replaced with a similar mount that does not significantly increase the visual impact on the community. Site plan review is required.
- C. Existing Structures: Subject to the provisions of This Ordinance and site plan review and except as otherwise prohibited under Section 6.5 C, a carrier may locate a wireless telecommunications facility on an existing structure, building, utility tower or pole, or water tower.
- D. Ground Mounted Facility: A wireless telecommunications facility involving construction of a ground mount shall require site plan review and be subject to the provisions of this Ordinance.

## **6.5 Dimensional Requirements.**

Wireless telecommunications facilities shall comply with the following requirements:

- A. Maximum Height: In no case shall a wireless telecommunications facility exceed ten (10) feet over the average tree canopy height. The Planning Board will consider a fifteen (15) foot extension provided that the applicant can demonstrate the technical necessity of such extension and provided that the performance and design standards of Section 6.6 are met. The applicant will pay for the Town to hire an independent qualified radio frequency engineer to substantiate the applicant\*s claim of technical necessity. Technical considerations include, but are not limited to, the availability of alternative sites, collocation, improved reception and coverage within the Town. The Planning Board shall not grant the extension for any sitting within scenic vistas designated by the Planning Board.
- B. Height, Existing Structures and Utility Poles: Carriers that locate new wireless telecommunications facilities on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts and monopoles may be permitted with no increase in height.

- C. Height, Other Existing Structures: The height of a wireless telecommunications facility shall not increase the height of a structure unless the facility is completely camouflaged; for example, a facility completely within a flagpole, steeple, or chimney. The increase in height of the structure shall be in scale and proportion to the structure as originally configured. A carrier may locate a wireless telecommunications facility on a building that is legally non-conforming with respect to height, provided that the provisions of this Ordinance are met.
- D. Setbacks: All wireless telecommunications facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located.
- E. Fall Zone for Ground Mounts: In order to ensure public safety, the minimum distance from the base of any ground-mount of wireless telecommunications facilities to any property line, public road, habitable dwelling, business or institution, or public recreational area shall be, at minimum, the distance equal to the height as defined in This Ordinance.

## **6.6 Performance and Design Standards.**

These shall apply to all applications.

- A. Visual impacts shall be measured by applying the following standards:
  - 1. Visual impacts are measured on the basis of change in community scale, as exhibited in relative height, mass or proportion of the wireless telecommunications facility within their proposed surroundings.
  - 2. Visual impacts are measured by the contrast created by new visible elements set against a contrasting background.
  - 3. Visual impacts are measured by evaluating how different colors and textures contrast against the existing background.
  - 4. Visual impacts are measured by evaluating how the use of materials that are foreign to the existing built environment within their proposed surroundings create visual blight.
- B. Enhancements are measured on the basis of:
  - 1. Conservation of opportunities to maintain community scale, e.g., buffering areas and low-lying buildings should not be compromised so as to start a trend away from the existing community scale.
  - 2. Amount and type of landscaping and/or natural vegetation.
  - 3. Continuation of existing colors, textures, and materials.
- C. Visibility focuses on:
  - 1. Eliminating or mitigating visual impact.

2. Protecting, continuing and enhancing the existing environment.

D. Camouflage for Facilities on Existing Buildings or Structures: Roof Mounts

1. When a wireless telecommunications service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways.
2. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building\*s silhouette.

E. Camouflage for Facilities on Existing Buildings or Structures: Side Mounts:

1. Wireless telecommunications facilities which are side mounted shall blend with the existing building\*s architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted or shielded with material consistent with the design features and materials of the building.

F. Camouflage for Ground Mounted Facilities:

1. The carrier shall maintain a vegetative buffer at least as tall as the fence, 360° surrounding the facility including the security fence, a minimum twenty-five (25) feet deep starting at the fence. The barrier shall be in keeping with the surrounding vegetation and shall effectively screen the facility 365 days of the year.
2. The vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier\*s lease. The easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying, present a hazard to persons or property, or as approved during site plan review.

G. Color: To the extent that any component of a wireless telecommunications facility extends above the height of the vegetation immediately surrounding it, it shall be of a color which blends with the background or surroundings, including guy wires.

H. Equipment Shelters

1. Equipment shelters shall be located in underground vaults; or
2. Equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the wireless telecommunications facility; or
3. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood; or

4. If mounted on a roof top, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.
  5. All utilities to the site from existing utilities shall be underground.
- I. Lighting, Signage and Security:
1. Lighting:
    - a. The mounts of the wireless telecommunications facility shall be lighted only if required by the Federal Aviation Administration (FAA).
    - b. Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Foot-candles measurements at the property line shall be 0.0 initial foot candles.
  2. Signage: Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of Section 5.1.
  3. Security Barrier: A security barrier is required for all wireless telecommunications facilities.
- J. Historic Buildings and Districts: Any application to which this section applies shall be referred to the Heritage Commission for an advisory recommendation regarding the architectural compatibility of the proposal.
1. Any wireless telecommunications facility located on or within an historic structure shall not alter the character or defining features, distinctive construction methods or original historic materials of the building.
  2. Any alteration made to a historic structure to accommodate a wireless telecommunications facility shall be fully reversible.
  3. Wireless telecommunications facilities authorized by this subsection shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas.
- K. Scenic Landscapes and Vistas
1. Wireless telecommunications facilities shall not be located within open areas that are visible from public roads, recreational areas, or abutting properties. All ground-mounted wireless telecommunications facilities shall be surrounded by a buffer of dense tree growth as per section 6.6 F.
  2. Wireless telecommunications facilities shall not be visible above the ridge line from public roads, recreational areas, designated scenic vistas or abutting property.

L. Driveways

1. Existing entrances and driveways to serve a wireless service facility shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic and environmental impact.
2. New driveways to serve a wireless telecommunications facility shall not exceed twelve (12) feet in width. A 1½" crushed gravel surface is required.

M. Antenna Types

1. Any antenna array placed upon an existing or proposed ground mount, utility pole or transmission line mount shall have a diameter of no more than four (4) feet, exclusive of the diameter of the mount unless the Planning Board finds a larger antenna array does not materially impair the visual impact of the siting.
2. Ground and Roof Mounts: All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof mounted monopoles are expressly prohibited unless constructed as part of a reconstruction project permitted under Section 6.4 B.

N. Hazardous Waste: 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. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten percent (110%) of the volume of the hazardous materials stored or used on the site.

O. Noise: Wireless telecommunications facilities shall not generate noise in excess of that permitted under the Site Plan Review Regulations.

P. Radio Frequency Radiation (RFR) Standards: All equipment proposed for a wireless telecommunications facility shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation (FCC Guidelines), under Report and Order, FCC 96-326, published on August 1, 1996, and all subsequent amendments.

**6.7 Monitoring and Maintenance**

A. The owner of the facility shall maintain the wireless telecommunications facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.

B. As part of the issuance of the site plan approval or building permit, the property owner shall agree that the Town of Madison may enter the subject property to obtain RFR measurements and noise measurements at the expense of the carrier. The Town of Madison shall provide reasonable written notice to the carrier and landowner and provide them the opportunity to accompany the Town Representatives when the measurements are conducted.

- C. Security for Removal: Recognizing the hazardous situation presented by abandoned and un-monitored wireless telecommunications facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunications facilities in the event that a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with section 6.8. The amount of the security shall be based upon the removal cost plus fifteen percent (15%), provided by the applicant and certified by an independent professional civil engineer licensed in New Hampshire every five (5) years from the date of the Planning Board's approval of the site plan. If the cost has increased more than fifteen percent (15%) then the owner of the facility shall provide additional security in the amount of the increase. It shall be a condition of any approval granted under this ordinance that the name and address of the facility owner shall be accurately reported to the Town at all times during the life of the facility. All transfers of ownership shall be reported in writing to the Town before such transfers occur.

## **6.8 Abandonment or Discontinuation of Use**

- A. Notification: At such time that a carrier plans to abandon or discontinue operation of a wireless telecommunications facility, such carrier will notify the town by certified U.S. Mail of the proposed date of abandonment or discontinuation of operations.
- B. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operation. In the event that a carrier fails to give such notice, the wireless telecommunications facility shall be considered abandoned upon such discontinuation of operations.
- C. Removal: Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the wireless telecommunications facility within ninety (90) days from the date of abandonment or discontinuation of use. This shall include, but not be limited to:
  - 1. Removal of antennas, mount, equipment shelters and security barriers from the subject property.
  - 2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
  - 3. Restoring the location of the facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.
- D. Failure to Remove: If the owner of the facility does not remove the facility upon the Board of Selectmen's order, then the Board of Selectmen shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Board of Selectmen. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action. The carrier shall be fined one hundred dollars (\$100) per day starting on the ninety first (91<sup>st</sup>) day after declaration until the facility is removed.

## **ARTICLE VII: GROUND WATER PROTECTION REGULATIONS**

### **7.1 Ground Water Protection District**

Pursuant to RSA 674:16-21, the Town of Madison adopts a Groundwater Protection District and accompanying regulations in order to protect, preserve and maintain potential groundwater supplies, well head protection areas and related groundwater recharge areas within the Town.

### **7.2 District Boundaries**

- A. Location: The Groundwater Protection District is an overlay district which is the existing underlying zoning and includes within its boundaries the Wellhead Protection Areas and Stratified Drift Aquifers shown on the map entitled "Drinking Water Resources and Potential Contamination Sources for the Town of Madison" dated April 8, 1999, by NHDES.
- B. Appeals: Where the bounds of an identified Groundwater or recharge area, as delineated, are in doubt or in dispute, any person aggrieved by such delineation may appeal the boundary location to the Planning Board. Upon receipt of a written appeal, the Planning Board shall suspend further action on development plans related to the area under appeal and shall engage, at the expense of the person aggrieved, a qualified hydrologist to prepare a report determining the proper location and extent of the Groundwater and recharge area relative to the property in question.

### **7.3 Applicability**

This ordinance applies to all uses in the Groundwater Protection District, except for those uses exempt under sections 7.9 and 7.10 of this Ordinance.

### **7.4 Performance Standards**

- A. The minimum lot size within the Groundwater Protection District for each newly created lot shall be the same as allowed in the underlying zoning district. Larger lot sizes may be required depending on the soil-based lot sizing standards found within the Madison Subdivision Regulation (Section VII.B).
- B. Within the Groundwater Protection District, a minimum of eighty-five percent (85%) of a single lot or building site must allow infiltration of precipitation. Recharge impoundments shall have vegetative cover for surface treatment and infiltration.
- C. For any use that will render impervious more than fifteen percent (15%) or more than 2,500 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which is consistent with New Hampshire Stormwater Manual Volumes 1-3, December 2008, NH Department of Environmental Services.
- D. The developer shall submit a storm water drainage plan prepared and stamped

by a licensed engineer. Such a plan shall provide for the retention and percolation within the groundwater of all development generated storm water runoff from a twenty-five (25) year storm event, such that the post-development discharge volume to the groundwater is, at a minimum, equal to the pre-development discharge to the groundwater. Furthermore, the storm water drainage plan shall provide for the removal of oil and gasoline from parking lot runoff by the use of, oil/gas separators or other devices, prior to retention and percolation of the runoff.

- E. All State regulated substances stored in containers with a capacity of five (5) gallons or more must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains.
- F. Facilities where State regulated substances are stored must be secured against unauthorized entry by means of doors and/or gates which are locked when authorized personnel are not present and must be inspected weekly by the facility owner.
- G. Outdoor storage areas for State regulated substances must be protected from exposure to precipitation and must be located at least fifty (50) feet from surface water or storm drains, at least seventy five (75) feet from private wells, and outside the sanitary protective radius of wells used by public water systems.
- H. Secondary containment must be provided for outdoor storage of regulated substances if an aggregate of two hundred and seventy five (275) gallons or more of State regulated substances are stored outdoors on any particular property
- I. Containers in which State regulated substances (listed by NH DES) 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.
- J. Animal manures, fertilizer, and compost must be stored in accordance with Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, August 2005, and any subsequent revisions.
- K. Prior to any land disturbing activities, all inactive wells on the property, not in use or properly 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.
- L. All transfers of petroleum from delivery trucks and storage containers over five gallons in capacity shall be conducted over an impervious surface having a positive limiting barrier at its perimeter.

## 7.5 Spill Prevention, Control and Countermeasure (SPCC) Plan

Conditional uses, as described under Section 7.7, using regulated substances shall submit a spill control and countermeasure (SPCC) plan to the Code Enforcement Officer, who 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. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
- B. 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.
- C. A list of all regulated substances in use and locations of use and storage.
- D. 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.
- E. A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.

## 7.6 Permitted Uses

The following activities may be permitted provided they are conducted in accordance with the intent of this Ordinance.

- A. Any use permitted by the underlying district of the Zoning Ordinance, except as prohibited in Section 7.8 or regulated by Section 7.4 of this Article.
- B. Maintenance or repair of any existing structure provided there is no *decrease* in precipitation infiltration above the limit established in Section 7.4 of this Article.
- C. Agricultural and forestry uses, provided that fertilizers, pesticides, manure and other leachables are used according to best management practices as prescribed by the Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Foods, August 2005, and any subsequent revisions. All said leachables must be stored under shelter.

## 7.7 Conditional Uses

- A. The following uses, if allowed in the underlying zoning district, are permitted only after approval is granted by the Planning Board:
  - 1. Industrial and commercial land uses not otherwise prohibited by Section 7.8 of this Ordinance.
  - 2. Multi-family residential development.

3. Sand and gravel excavation and other mining provided that such excavation or mining is not carried out within six (6) vertical feet of the seasonal high water table.

4. Animal feedlots and manure storage facilities provided the applicant follows best management practices as prescribed by the Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Foods, August 2005, and any subsequent revisions.

5. The development or operation of golf courses.

6. The development or operation of vehicle race tracks or vehicle proving grounds.

B. The Planning Board shall grant approval for those uses listed above only after it is determined that all of the following conditions have been met:

1. The use will not detrimentally affect groundwater quality, nor cause a significant long-term reduction in the volume of water contained in the groundwater or in the storage capacity of the groundwater.

2. The use will discharge no wastewater on-site other than that typically discharged by domestic wastewater disposal systems.

3. The proposed use complies with all other applicable provisions of this Section.

C. Conditional uses shall develop storm water management and pollution prevention plans and include information consistent with Stormwater Management For Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices, (US EPA 992). The plan shall demonstrate the use will:

1. Minimize, through a source control plan that identifies pollution prevention measures, the release of regulated substances into storm water;

2. Demonstrate that recharge to groundwater will not result in violation of Ambient Groundwater Standards (Env-Ws 410.05) at the property boundary.

3. Stipulate that expansion or redevelopment activities shall require an amended storm water plan and may not infiltrate storm water through areas containing contaminated soils without completing a Phase I Assessment in conformance with ASTM E 1527-05, also referred to as All Appropriate Inquiry (AAI).

D. All conditional uses shall be subject to inspections by the Code Enforcement Officer or other agent designated by the Selectmen. The purpose of these inspections is to ensure continued compliance with the conditions under which approvals were granted.

## **7.8 Prohibited Uses**

The following uses are prohibited within the Groundwater Protection District:

- A. On-site disposal, bulk storage, processing or recycling of toxic or hazardous materials or wastes as defined under RSA 147-A.
- B. Underground storage tanks except as regulated by the NH Water Supply and Pollution Control Commission (WM 1401). Storage tanks if contained within basements with floors and walls of impervious surfaces are permitted.
- C. The development or operation of a snow dump.
- D. Automotive uses including: car washes, service and repair shops.
- E. Laundry and dry cleaning establishments.
- F. The development or siting or operation of a solid waste landfill.
- G. The outdoor storage of road salt or other de-icing chemicals in bulk.
- H. The development or siting of a wastewater or septage lagoon.
- I. The spreading of septage or sludge.
- J. Commercial fuel stations either as a separate establishment or as part of a commercial enterprise.
- K. The development or operation of a junk and/or salvage yard.
- L. The development or operation of a petroleum bulk plant or terminal.
- M. The development or operation of gasoline stations.

## **7.9 Special Exception for Lots of Record.**

Upon application to the Zoning Board of Adjustment, a special exception shall be granted to permit the erection of a structure within the Groundwater Protection District on an existing lot provided that all the following conditions are found to exist:

- A. The lot upon which the exception is sought was an official lot of record, as recorded with the Carroll County Registry of Deeds, prior to the date on which this Section was posted and published in the Town.
- B. The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside of the Groundwater Protection District.
- C. The design and construction of the proposed use will be consistent with the purpose and intent of this Section.

## **7.10 Existing Non-Conforming Uses**

Existing non-conforming uses may continue, may not change to another non-conforming use, and may expand only within the limits allowed under New Hampshire law as expressed in cases such as New London Land Use Association v. New London Zoning Board, 130 N.H. 510 (1988). Further, any such non-conforming uses shall comply with all applicable State and Federal requirements, including NH Administrative Rule Env-Ws 421, Best Management Practices.

## **7.11 Administration**

The provisions of the Groundwater Protection District shall be applied and interpreted by the Planning Board.

## **7.12 Exemptions**

The following uses are exempt from the specified provisions of this ordinance as long as they are in compliance with all applicable local, state, and federal requirements:

- A. Any private residence is exempt from all Performance Standards.
- B. Any business or facility where regulated substances are not stored in containers with a capacity of five (5) gallons or more is exempt from Section 7.4, E through I.
- C. Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment in place, is exempt from Performance Standard 7.4 F.
- D. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle is exempt from Section 7.4 F through I.
- E. Storage and use of office supplies is exempt from Section 7.4 F through I.
- F. Temporary storage of construction materials on a site where they are to be used is exempt from Section 7.4 F through I.
- G. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions of this ordinance.
- H. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Wm 401.03(b)(1) and 501.01(b) are exempt from Section 7.4 F through I.
- I. Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Section 14 of this ordinance.

### **7.13 Relationship Between State and Local Requirements**

Where both the State and the municipality have existing requirements, the more stringent shall govern.

### **7.14 Maintenance and Inspection**

A. For uses requiring planning board approval for any reason, a narrative description of maintenance requirements for structures required to comply with Section 7.4 shall be recorded at the Carroll County Registry of Deeds so as to run with the land on which such structures are located. The description so prepared shall comply with the requirements of RSA 478:4-a.

B. Inspections may be required to verify compliance with Section 7.4. Such inspections shall be performed by the Code Enforcement Officer at reasonable times with prior notice to the landowner.

C. All properties within the Groundwater Protection District known to the Code Enforcement Officer as using or storing regulated substances in containers with a capacity of five (5) gallons or more, except for facilities where all regulated substances storage is exempt from this Ordinance under Section 7.12, shall be subject to inspections under this Section.

D. The Town of Madison may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Board of Selectmen as provided for in RSA 41-9:a.

### **7.15 Enforcement Procedures and Penalties**

Any violation of the requirements of this ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676.

### **7.16 Saving Clause**

If any provision of this ordinance is found to be unenforceable, such provision shall be considered separable and shall not be construed to invalidate the remainder of the ordinance.

## **ARTICLE VIII: FLOODPLAIN MANAGEMENT**

### **8.1 Special Flood Hazard Areas:**

This ordinance, adopted pursuant to the authority of RSA 67:16, shall be known as the Town of Madison Floodplain management Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Madison 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 regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Carroll, N.H." dated March 19, 2013, together with the associated Flood Insurance Rate Maps dated March 19, 2013, which are declared to be a part of this ordinance and are hereby incorporated by reference.

### **8.2 Definition of Terms:**

The following definitions shall apply only to this Floodplain management ordinance, and shall not be affected by the provisions of any other ordinance of the Town of Madison.

1. "Area of Special Flood Hazard" is the land in the floodplain within the Town of Madison subject to a one-percent or greater possibility of flooding in any given year. The area is designated as Zone A on the Flood Insurance Rate Map.
2. "Base Flood" means the flood having a one-percent possibility of being equaled or exceeded in any given year.
3. "Basement" means any area of a building having its floor sub-grade on all sides.
4. "Building" see "structure".
5. "Development" means 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.
6. "FEMA" means the Federal Emergency Management Agency.
7. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. the overflow of inland or tidal waters, or
  - b. the unusual and rapid accumulation or runoff of surface waters from any source.

8. "Floodplain" or "Flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "Flooding").
9. "Flood proofing" means 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.
10. "Functionally dependent use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities but does not include long-term storage or related manufacturing facilities.
11. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
12. "Historic Structure" means any structure that is:
  - A. 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,
  - B. 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;
  - C. 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
  - D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
    - (i) by an approved state program as determined by the Secretary of the Interior,
    - Or
    - (ii) directly by the Secretary of the Interior in states without approved programs
13. "Lowest Floor" means 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.

14. "Manufactured Home" means a structure, transportable in one or more sections, which is built on permanent chaises 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 days. This includes manufactured homes located in a manufactured park or subdivision.
15. "Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
16. "Mean sea level" means the Nation Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.
17. "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.
18. "100-year flood" – see "base flood".
19. "Recreational Vehicle" is defined as:
  - a. built on a single chassis;
  - b. 400 square feet or less when measured at the largest horizontal projection;
  - c. designed to be self-propelled or permanently tow able by a light duty truck; and
  - d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
20. "Special flood hazard area" (see – "area of special flood hazard")
21. "Structure" means for flood plain 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.
22. "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.

23. "Substantial damage" means 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.
24. "Substantial improvement" means any combination for 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:
  - a. the appraised value prior to the start of the initial repair or improvement, or
  - b. 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".

25. "Water surface elevation" means the height, in relation to the national Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.
26. "Violation" means 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 in 44CFR 60.3(b), (5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

### **8.3 Permits:**

All proposed development in any special flood hazard areas shall require a building permit.

### **8.4 Construction Requirements:**

The building inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction 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 or 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.

### **8.5 Water and Sewer Systems:**

Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area 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.

### **8.6 Certification:**

For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the building inspector:

- a. the as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement
- b. if the structure has been flood proofed, the as-built elevation (in relation to NGVD) to which the structure was flood proofed
- c. any certification of flood proofing

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

**8.7 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.

**8.8 Watercourses:**

1. 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 environmental Services Department 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.

2. 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.

3. 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.

No encroachments, including fill, new construction, 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.

**8.9 Special Flood Hazard Areas:**

1. In Zone A the Building Inspector shall obtain, review, and reasonably utilize any 100-year 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).

2. The Building Inspector's 100-year flood elevation determination will be used as criteria for requiring in Zone A that:

- a. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation.
- b. That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement)

elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:

- (i) be flood proofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
  - (ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
  - (iii) be certified by a registered professional engineer or architect that their design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
- c. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured homes at or above the 100-year 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.
- d. All recreational vehicles placed on sites with Zones A shall either:
- (i) be on the site for fewer than 180 consecutive days;
  - (ii) be fully licensed and ready for highway use; or,
  - (iii) meet all standards of Section 60.3 (b) (1) of the National flood Insurance Program Regulations and the elevation and anchoring requirements for “manufactured homes” in paragraph (c) (6) of Section 60.3.
- e. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:
- (i) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;
  - (ii) the area is not a basement;
  - (iii) 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. 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. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

**8.10 Variances and Appeals:**

1. Any order, requirement, decision or determination of the building inspector made under this ordinance may be appealed to the Zoning Board of Adjustment (ZBA) as set forth in RSA 676:5.
2. 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:
  - a. the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
  - b. if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
  - c. the variance is the minimum necessary, considering the flood hazard to afford relief.

The Zoning Board of Adjustment (ZBA) shall notify the applicant in writing that:

- a. 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
- b. such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

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

**8.11 Severability Section:**

The invalidity of any section or provision of the Ordinance shall not invalidate any other section or provision thereof.

## ARTICLE IX: SMALL WIND ENERGY SYSTEMS

### 9.1 Purpose:

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

### 9.2 Definitions:

**Meteorological tower (met tower).** Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

**Modification.** Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

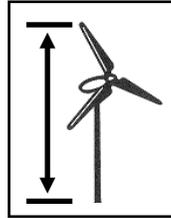
**Net metering.** The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

**Power grid.** The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

**Shadow flicker.** The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

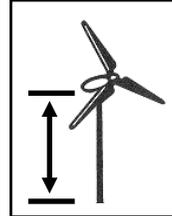
**Small wind energy system.** A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

**System height.** The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.



**Tower.** The monopole, guyed monopole or lattice structure that supports a wind generator.

**Tower height.** The height above grade of the fixed portion of the tower, excluding the wind generator.



**Wind generator.** The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

### 9.3 Procedure for Review:

1. **Building Permit:** Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.
2. **Application:** Applications submitted to the building inspector shall contain a site plan with the following information:
  - i) Property lines and physical dimensions of the applicant's property.
  - ii) Location, dimensions, and types of existing major structures on the property.
  - iii) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
  - iv) Tower foundation blueprints or drawings.
  - v) Tower blueprints or drawings.

- vi) Setback requirements as outlined in this ordinance.
  - vii) The right-of-way of any public road that is contiguous with the property.
  - viii) Any overhead utility lines.
  - ix) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
  - x) Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
  - xi) Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
  - xii) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
  - xiii) Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
  - xiv) List of abutters to the applicant's property.
3. Abutter and Regional Notification: In accordance with RSA 674:66, the building inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV.

#### 9.4 Standards:

- 1. The building inspector shall evaluate the application for compliance with the following standards;
  - a. Setbacks: The setback shall be calculated by multiplying the minimum setback requirement number by the system height

and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

Minimum Setback Requirements			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.1	1.5

- i) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
  - ii) Guy wires used to support the tower are exempt from the small wind energy system setback requirements.
- b. Tower: The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.
- c. Sound Level: The small wind energy system shall not exceed 60 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
- d. Shadow Flicker: Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
- e. Signs: All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.

- f. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
- g. Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.
- h. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
  - i) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
  - ii) The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
  - iii) A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
- i) Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research

and Development Authority, or a similar list approved by the state of New Hampshire, if available.

- j) Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.
- k) Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- l) Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

#### 9.5 Abandonment:

1. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
2. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. "Physically remove" shall include, but not be limited to:
  - a. Removal of the wind generator and tower and related above-grade structures.
  - b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
3. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The

owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.

4. If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

#### 9.6 Violation:

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

#### 9.7 Penalties:

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17.

## Article X. Work Force Housing

**10.1. Purpose:** This Article was established in order to meet the goals related to work force housing provisions set forth in the Madison Master Plan (2009 update) and to comply with the provisions of 674:58, et.seq. as amended by SB 342 as enacted at the 2008 NH legislative session. The purpose of this Article is to encourage and provide for the development of affordable housing within Madison. The Town recognizes that frequently, property that may be suitable as a location for affordable housing fails to meet some of the objective criteria that govern land use, and that strict adherence to all zoning, subdivision, and site plan requirements may render the project economically unfeasible. The Town also recognizes that there are some situations in which normal zoning or regulation requirements may be waived without necessarily sacrificing public health, safety, and welfare so long as proper safeguards are maintained. Accordingly, it has been deemed advisable to adopt innovative land use controls which would permit the Planning Board to identify a project that is suitable for the waiver of requirements, and when so identified, that the project would be required to meet less stringent standards, provided the conditions set forth herein are met.

**10.2. Authority:** This innovative land use control Article is adopted under the authority of RSA 674:21, and is intended as an “Inclusionary Zoning” provision, as defined in RSA 674:21 (I)(k) and 674:21 (IV)(a).

Any person aggrieved by a Planning Board decision that constitutes a denial of a Conditional Use Permit due to noncompliance with one or more of the provisions of this ordinance may appeal that decision to the Superior Court, as provided for in RSA 677:15. A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment (RSA 676:5 III).

**10.3. Applicability:** Development in accordance with the provisions of this Article is permitted as a conditional use within the following zoning districts as defined in this ordinance: Residential, Village, Commercial, and Edelweiss Village.

**10.4. Permitted Uses:** In the interest of encouraging affordability, single family, duplex, multi-family, and manufactured housing is permitted within an application under this Article irrespective of the permitted uses of the underlying zoning requirements in the areas identified in the section above.

**10.5. Identification of Suitable Project:** The Planning Board may review an application designated by the applicant as affordable housing and grant a Conditional Use Permit under the conditions of Section II.4 as well as the following criteria.

### General Criteria

1. The project shall be constructed in a manner that is harmonious with neighboring developments, housing, and natural surroundings.
2. The project shall not detract from either the ecological or visual qualities of the environment.
3. The housing proposal shall be affordable within the meaning of the Ordinance.
4. The proposal meets the purposes of the ordinance under which the application is proposed.

5. There will be no significant adverse impacts resulting from the proposed use upon the public health, safety, and general welfare of the neighborhood and the Town of Madison.

6. The proposed use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or inappropriate lighting than any use of the property permitted under the existing zoning district ordinances.

7. The proposed use will not adversely affect the ground water resources of Madison.

8. The project shall comply with all site plan and/or subdivision regulations that apply, other than those waived hereunder.

### **Specific Criteria**

1. Unless waived pursuant to Section X.G, the project will comply with the Modified Lot Size, Density, Setbacks, and Open Space requirements set forth in Section X.F.

**10.6. Modified Lot Size, Density, Frontage, Setbacks, and Open Space:** The traditional lot size, density, setback, and open space requirements applicable in other districts shall not apply and the Planning Board shall establish the lot size, density, setbacks, and open space requirements for each project as they determine to be necessary in the best interest of the Town and to facilitate the project, provided however, that the following limitations shall apply:

1. Lot size, density, and frontage may be reduced based upon land conditions and septic viability..

2. Open space shall be sufficient to accommodate the needs of the proposed occupants of the project.

3. Setbacks shall be sufficient to buffer and protect adjacent properties and the street from encroachment.

4. No structure shall be constructed to a height greater than thirty six (36) feet.

**10.7. Waiver of Specific and General Conditions for “Workforce Housing” project:** The Planning Board is hereby empowered to approve a project and waive any or all of the above listed standards, but only when it has been demonstrated that construction of a ‘workforce housing project,’ is incapable of being feasibly constructed because of those standards for economic reasons. In making such a determination, however, the Planning Board shall not allow the construction of any project when the same will not comply with reasonable standards related to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection. Further, the Board in making such waiver, shall grant only the minimum waiver(s) demonstrated to be necessary to render the project economically feasible.

An applicant seeking to request a waiver under this section shall apply for the same to the Planning Board. When making that application, the applicant shall provide sufficient information to the Board to demonstrate the following, the burden for which shall be on the applicant:

1. The proposed project is incapable of being feasibly constructed within the limitations identified in the specific and general criteria set forth in the above section of the ordinance for economic reasons and that the limitations do not permit any other sufficient realistic or reasonable opportunities to provide workforce housing; and

2. The granting of waivers will result in the project being feasible, economically, and will allow for the construction of 'workforce housing' units that are available to the target income group(s); and

3. The applicant will identify the general and specific standards for which a waiver is being sought and will provide appropriate documentation to demonstrate the manner in which the application of such general or specific standards is causing the project to be incapable of being feasibly constructed for economic reasons; and

4. The project design is such that it complies with all applicable standards related to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection; and

5. The project is "affordable" within the meaning of this ordinance and/or statutory workforce housing provisions found in RSA 674:58 et.seq.

### **10.8. Definitions**

1. Affordable Housing: Housing which is intended for sale or lease and is affordable. Affordable, in this context, for purposes of housing intended for sale, means housing with combined mortgage loan debt services, property taxes, and required insurance that does not exceed thirty (30) percent of a household's gross annual income when such annual gross income is no more than one hundred (100) percent of the median income for a four (4) person household for the metropolitan area or county in which the housing is located as published annually by the US Department of Housing and Urban Development.

Affordable, in this context, for purposes of housing intended for lease, means housing with combined rental and utility costs that do not exceed thirty (30) percent of a household's gross annual income when such annual gross income is no more than sixty (60) percent of the median income for a three (3) person household for the metropolitan area or county in which the housing is located as published annually by the US Department of Housing and Urban Development.

2. Workforce Housing: As defined in Affordable Housing, but shall not include housing developments that exclude minor children from more than twenty (20) percent of the units, or in which more than fifty (50) percent of the dwelling units have fewer than two (2) bedrooms. Workforce Housing shall also include "multi-family housing" as that term is defined in RSA 674:58, (II), which means a building or structure containing five (5) or more dwelling units, each designed for occupancy by an individual household.

## **Article XI Accessory Dwelling Unit (ADU)**

**11.1.1 Purpose** This Accessory Dwelling Unit Ordinance is enacted in accordance with RSA 674:71-73 as an option for homeowners to offer separate and independent living space, including provisions for sleeping, cooking, eating and sanitation for their extended family or to offer small dwelling units as rentals.

**11.1.2. Authority** This Accessory Dwelling Unit Ordinance is adopted under the authority of RSA 674:71-73.

**11.2 Applicability** Accessory Dwelling Units shall be permitted within all zoning districts, provided they comply with Section 11.4 of this Ordinance.

**11.3 Restrictions on Accessory Dwelling Units** The single-family dwelling and the accessory dwelling unit and lot shall remain in common ownership at all times and shall not be converted to a condominium or any other form of ownership. In order to ensure compliance with this requirement, the property owners, at the time the ADU is established, shall be required to execute a restrictive covenant which shall be recorded at the Carroll County Registry of Deeds, with a copy provided to the Building Code Inspector, prior to the issuance of the Certificate of Occupancy. The Town shall have the right but not the obligation to enforce this restrictive covenant.

### **11.4 Requirements**

- (A) The ADU must be located in the same building as the principle residence, unless the lot meets the minimum required lot size for all zoning districts. In cases where the lot size meets or exceeds the minimum lot requirement, the ADU may be located in a detached structure, such as garage or barn, provided the existing structure conforms to the required setbacks for the zoning district.
- (B) The ADU shall meet all New Hampshire State Building Code and State Fire Code.
- (C) The ADU shall, in no case, be greater than 800 square feet.
- (D) A minimum of two (2) off street parking spaces shall be provided for the ADU.
- (E) A New Hampshire licensed septic designer shall certify the capacity of the existing septic system to meet the increased demand; or the septic system shall be upgraded to meet the increased demand.
- (F) An interior door shall be provided between the primary dwelling unit and the interior/attached ADU.
- (G) RVs, campers or mobile homes are not allowed for use as an ADU.
- (H) Sale of ownership of the ADU, separate from the principle dwelling unit is prohibited.
- (I) Only one ADU shall be permitted per lot.

## Definitions

### APPENDIX A - Definitions

**ABUTTER** - For the purpose of This Ordinance and for the purpose of notification, an abutter shall be as defined in RSA 672:3 as may be amended by the General Court.

**ACCESSORY BUILDING OR USE** – A customary accessory building or use is one which: (a) is secondary to and serves the principal building or principal use; and (b) is secondary in area, extent, or purpose to the principal building or principal use served; and (c) contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use served; and (d) is located on the same lot as the principal building or principal use served; and (e) contributes activity to the principal use. Attached garages, porches and other appenditures, and other attached structures are considered a part of the principal building and are not considered an accessory building or use.

**ACCESSORY DWELLING UNIT (ADU)**– Any accessory unit in a principle building or accessory structure that - provides independent living facilities with provisions for sleeping, cooking, eating and sanitation and whose interior is designed, adapted or used to accommodate human habitation, and located on the same parcel of land as the principle dwelling unit it accompanies.

**ACRE** - For the purpose of This Ordinance, 43,560 sq. ft.

**ANIMAL FEEDLOT** - A commercial agricultural establishment consisting of confined feeding areas and related structures used for the raising of livestock.

**ANTENNA** - The surface from which wireless radio signals are sent and/or received by a wireless telecommunications facility.

**ANTENNA ARRAY** - A collection of antennas attached to a mount to send and receive radio signals.

**APPENDAGE SIGN** - A sign related to the business or profession conducted, or to a commodity, service or product sold or offered upon the premises where such sign is located, appended to the primary sign or sign structure.

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

**AVERAGE TREE CANOPY HEIGHT** - An average height found by inventorying the height at above ground level (AGL) of all trees over twenty (20) feet in height in the fall zone.

**BED & BREAKFAST** – A private owner-occupied residence with guest rooms.

**CAMOUFLAGED** - A wireless telecommunications facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

**CARRIER** - A company that provides wireless telecommunications services, also

sometimes referred to as a provider.

**COMMERCIAL USE** – Any use involving in part or in whole the sale of merchandise, materials, or services, but not including home occupations as defined in this section.

**CO-LOCATION** - The use of a single mount on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

**COOKING** - Equipment is supplied for the purpose of cooking food such as but not limited to a traditional stove/range/oven located anywhere within the separate and independent living space from the primary dwelling unit.

**DAY CARE FACILITIES** – A facility which provides daytime care and supervision of any number of children or adults and licensed by the appropriate state agency.

**DIRECTIONAL SIGN** - A sign directing or guiding traffic but bearing only such information as the name of the business, direction and distance.

**DRY CLEANER** - An operation which cleans clothing with the use of substances consistent with dry cleaning operations and not using standard detergents and water methods.

**DWELLING UNIT** - One or more rooms arranged, designed, or used for non-transient residential purposes with independent sanitary and cooking facilities.

**EQUIPMENT SHELTER** - An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for wireless telecommunications service facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

**ESSENTIAL SERVICES** - The erection, construction, alteration or maintenance by public utilities or municipal or other government agencies of facilities reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other government agencies and for public health, public safety, or general welfare.

**FACILITY** - Wireless telecommunications facility.

**FALL ZONE** - The area on the ground from the base of a ground mounted personal wireless service facility that forms a circle with the diameter equal to the height of the facility, including any antennas or other appurtenances. The fall zone is the area within which there is potential hazard from falling debris (such as ice) or collapsing material.

**FARM** - Any land, buildings, or structures on or in which agricultural and farming activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land as defined by RSA 21:34-a, I & II.

**FARM ROADSIDE STAND** – An accessory structure, considered to be an agricultural operation and not commercial, on a farm used for sale of farm products, provided that thirty five percent (35%) of the product sales in dollar volume is attributable to products produced on the farm of the stand owner.

**FOOTPRINT** – The outermost exterior dimensions of a structure as viewed from above, including any permanent extensions such as balconies, decks (attached or unattached), steps, overhangs and chimneys. This footprint is not measured in volume.

**FRONTAGE** - The distance along a lot line, a roadway, or a body of water or on a 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.

**GOLF COURSE** - Land use consisting of one or more golf links with a natural turf.

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

**GROUNDWATER RECHARGE** - The infiltration of precipitation through surface soil materials into the groundwater. Recharge may also occur from surface waters, including lakes, streams and wetlands.

**GUYED TOWER** - A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

**HEIGHT** - The height above ground level (AGL) from the natural grade of a site to the highest point of a structure, measured from the lowest leg or point of the mount.

**HOME OCCUPATIONS** - Any use conducted by a member of the family within a dwelling or an accessory building, with a maximum of three (3) employees in addition to the family domiciled in the dwelling, which is incidental to the use of the dwelling as a residence. No home occupation shall be permitted that changes the outside appearance of a dwelling; or generates traffic, parking, sewage or water use in excess of what is normal in the residential districts; creates a hazard to person or property, results in electrical interference, or becomes a nuisance; results in outside storage or display of anything, or that adversely affects or undermines the rural residential character of the districts.

**IMPERVIOUS** - Not readily permitting the infiltration of water

**IMPERVIOUS SURFACE** – A surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Asphalt; 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.

**INFILTRATION** – process by which water enters the soil profile (seeps into the soil).

**JUNK YARD** - Any establishment or place of business which is maintained, operated, or used for storing, keeping buying or selling junk, or for the maintenance or operation of an automotive recycling yard and includes garbage dumps and sanitary landfills. The word does not include any motor vehicle dealers registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126.

**LATTICE TOWER** - A type of mount with multiple legs and structural cross-bracing between the legs that is self-supporting and free-standing.

**LEACHABLE WASTES** - Waste materials, including solid wastes, sludge and agricultural waste capable of releasing contaminants to the surrounding environment.

**LIVING AREA** – A room or enclosed space designed for human occupancy in which individuals may live, sleep, cook, or dine; equipped with means of egress, light, heat and ventilation facilities. Excluding garages, decks, barns, sheds, or other accessory buildings.

**LOT** - A lot is a parcel of land occupied or capable of being occupied by only one main building and the accessory buildings or uses customarily incidental to it. A lot shall be of sufficient size to meet minimum zoning requirements for use, area, and required setbacks (as per Subdivision Regulations VII, B) Such lot must meet the minimum frontage requirements as set forth in Section 5.7 of the Zoning Ordinance, unless it is a nonconforming lot subject to Section I.3 of the Zoning Ordinance.

**MACHINE SHOP** - A light industry devoted to the precision manufacture or service of components used in the production of machines.

**MANUFACTURED HOME** – A dwelling accommodation designed to be transported with or without wheels or skids and which is equipped with running water, sanitary facilities, bath facilities and a toilet.

**MAST** - A thin pole that resembles a street light standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

**MEDICAL CENTER** - A building or portion thereof devoted to health care (dental and/or medical).

**MONOPOLE** - A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

**MOTEL** – A building or series of buildings in which lodging is offered for compensation, with direct independent access to and adjoining parking for each rental unit.

**MOUNT** - The structure or surface upon which antennas are mounted, including the following four types of mounts:

- Roof-mounted: Mounted on the roof of a building
- Side-mounted: Mounted on the side of a building
- Ground-mounted: Mounted on the ground
- Structure-mounted: Mounted on a structure other than a building

**MULTIPLE HOUSING** - Any building containing two or more dwelling units, which may be subject to site plan review.

**NON-CONFORMING LOT** – A lot which was lawfully created before the adoption or amendment of this ordinance but which does not conform to the current minimum dimensional requirements specified for the zone in which it is located.

**NON-CONFORMING USE OR STRUCTURE** – An activity or a building, structure or a portion thereof, which lawfully existed before the adoption or amendment of this ordinance, but which does not conform to all of the current terms and standards contained in this ordinance.

**NON-TRANSIENT OCCUPANCY** – Occupancy of a structure for any period of time greater than thirty days.

**NURSING HOME** - A building devoted to the care of the ill or aged under medical supervision.

**OPEN SPACE** – Any area of essentially unimproved land designated on a plan as permanently reserved for non-commercial public or private use.

**OUTDOOR STORAGE** - Storage of materials where they are not protected from the elements by a roof, walls and a floor with an impervious surface.

**OFFICE BUILDING** - Offices for doctors, lawyers, dentists, architects, real estate agents, insurance agents, service organizations, brokers or other similar occupations.

**PARKING SPACE** - An off-roadway space for parking of one motor vehicle (200 sq ft).

**PERSONAL WIRELESS TELECOMMUNICATIONS SERVICES** - Three types of services regulated by this ordinance - Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.

**PETROLEUM BULK PLANT OR TERMINAL** – means that portion of the property where petroleum products are received by tank vessel, pipeline, tank car or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline tank car, tank vehicle, portable tank, or container.

**POSITIVE LIMITING BARRIER** – A depression in the surface of an otherwise level impervious area designed to impede the flow and contain spilled substances within the perimeter of the impervious area.

**PRIMARY RECHARGE AREA** – The area as delineated on the Drinking Water Resources & Potential Contamination Survey for the Town of Madison map which contributes water to public drinking wells and/or an aquifer.

**PRIVATE SCHOOL** - Secular or religiously affiliated, elementary and/or secondary school, not supported by general tax dollars.

**PRIMARY SIGN** - A sign located on the premises identifying the name of the business

and/or the use, product or service offered.

**PUBLIC WATER SYSTEM** - a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves and average of at least twenty five (25) individuals daily at least sixty (60) days out of the year.

**RADIO FREQUENCY (RF) ENGINEER** - An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

**RADIO FREQUENCY RADIATION (RFR)** - The emissions from wireless telecommunications facilities.

**RECHARGE AREAS** - The land surface area from which groundwater recharge occurs.

**REGULATED SUBSTANCE** – petroleum, petroleum products, and substances listed under 40 CFR 302, 7/1/05 edition, excluding the following substances: ammonia, sodium hypochlorite, sodium hydroxide, acetic acid, sulfuric acid, potassium hydroxide, potassium permanganate, and propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure.

**RESTAURANT** - A single structure providing meals to the public.

**RETAIL STORES AND SHOPS** - Business establishments dealing primarily with retail customers for merchandise and services.

**ROADSIDE STAND** - An accessory structure of simple construction for the purpose of selling vegetables, fruits, antiques, and collectibles.

**SANITARY PROTECTIVE RADIUS** - The area around a well which must be maintained in its natural state as required by Env-Ws 378 and 379 (for community water systems) and Env-Ws 372.13 (for other public water systems).

**SANITATION** - Equipment is supplied for the purpose of sewage removal and includes but is not limited to items such as traditional septic system, a composting toilet, and incinerator toilet, etc. Refer to State of New Hampshire Department of Environmental Services Septic Standard ENV-WQ1000.

**SAWMILL** - A facility whose primary purpose is the processing (sawing) of forest products into timber for the building industry.

**SCENIC VISTAS** - Those areas designated by the Planning Board and on file at the Selectmen\*s Office at the time any application under this ordinance is submitted.

**SEASONAL HIGH WATER TABLE** - The depth from the mineral soil surface to the upper most soil horizon that contains 2% or more distinct or prominent redoximorphic features that increase in percentage with increasing depth as determined by a licensed Hydro-geologist, Soils Scientist, Wetlands Scientist, Engineer or other qualified professional approved by the Planning Board.

**SECURITY BARRIER** - A wall or fence that restricts an area from unauthorized entry or

trespass.

**SECONDARY CONTAINMENT** - A structure such as a berm or dike with an impervious surface which is adequate to hold at least one hundred and ten (110) percent (%) of the volume of the largest regulated substances container that will be stored there.

**SEPARATION** - The distance between one carrier's array of antennas and another carrier's array.

**SERVICE RETAIL BUSINESS** - A business of a nature that provides for the consumer needs of the residents of the Town.

**SETBACK** - The distance from the extreme limit of a structure to a boundary line, right-of-way, or the high water mark of a watercourse, or body of water.

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

**SURFACE WATER** - Streams, lakes, ponds and tidal waters, including marshes, water courses and other bodies of water, natural or artificial.

**SIGN** - A free standing structure designed to convey to persons not on the premises some information, knowledge or idea by means of letters, words, insignia, color, illuminated or non-illuminated device or illustration provided, however, that any sign designed to be read from two opposite directions shall be considered to be one sign. The area of all signs shall be measured within the maximum dimensions of the message board area, and shall include any space with such dimension.

**SINGLE FAMILY HOUSE** - Any building containing one dwelling unit.

**SITE COVERAGE** - That portion of the entire parcel or site which, through the development of the parcel, is rendered impervious to groundwater infiltration.

**SITE PLAN** - A dimensioned drawing showing lot boundaries, location of buildings with setbacks, septic system location, and roadway and parking space(s).

**SOIL WASTE** - Any discarded or abandoned material including refuse, putrescible material, septage, or sludge, as defined by New Hampshire Solid Waste Rules HE P 1901.03. Solid waste includes solid, liquid semi-solid or gaseous waste material.

**SPECIAL EXCEPTION** – A specific, permitted land use that may be allowed when zoning ordinance criteria and conditions are met.

**STABLE AND RIDING ACADEMY** - A facility with appropriate structures and fenced-in areas for the purpose of boarding, feeding, breeding, care of, and instruction of riding horses for recreation and show purposes.

**STEEP SLOPES** – Any area where the slope of the terrain exceeds 33%. Slopes in excess of 33% may not be included in the area used to satisfy the minimum lot size requirement.

**STONEWALL** – A free-standing wall, made of natural, non-manufactured stone, stacked without any binding agents to hold the stones in place, with a maximum height allowance of 48” above ground level.

**STRATIFIED-DRIFT AQUIFER** – A geologic formation of predominately well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.

**STRUCTURE** – That which is erected or assembled using a combination of materials for occupancy or use, whether portable or affixed to the ground. This includes structures of permanent or temporary construction, plastic, fabric, and/or canvas covered frame structures, structures for agricultural uses, blocks or permanent foundations, and all sheds and storage facilities. Septic systems, driveway pavement, fences or stone walls, flag poles, and well pump houses are not considered structures for the purpose of this ordinance.

**SURFACE WATER** – Streams, Lakes, ponds and tidal waters including marshes, water courses and other bodies of water, natural or artificial.

**TEN-YEAR STORM EVENT** - A storm of a magnitude that would only be expected to occur every ten (10) years as defined by FEMA

**TOXIC OR HAZARDOUS MATERIALS** - Any substance which poses an actual or potential hazard to water supplies or human health if such a substance were discharged to land or waters of the Town. Hazardous materials include volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis. Also included are pesticides, herbicides, solvents and thinners and such other substances as defined in the NH Water Supply and Pollution Control Rules, Section (WM 1403 and WS 1500), in the NH Solid Waste Rules He-P 1901.3(v), and in the Code of Federal Regulations 40 CFR 261 as amended.

**TRANSIENT OCCUPANCY** – Occupancy of a structure for any period of time up to and including thirty days.

**TRUCK AND EQUIPMENT DEPOT** - A facility whose purpose is the storage of heavy earth-moving equipment such as trucks, backhoes, graders, bulldozers, and the like.

**VARIANCE** – Approval to use a specific piece of property in a more flexible manner than allowed by the ordinance.

**VEHICLE RACE TRACK OR PROVING GROUNDS** – A track or course, impervious or pervious, used to race or test vehicle performance as a commercial business.

**WAREHOUSE FACILITY** - Primary purpose is inside storage of goods, materials, and/or equipment.

**WELLHEAD PROTECTION AREA** – The surface and subsurface surrounding a water well or well field supplying a community public water system, through which

contaminants are reasonably likely to move toward and reach such a water well or well field.

**WETLANDS** – Defined as in RSA 482-A:2:X – Wetlands means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology in accordance with the techniques outlined in the Corps of Engineers Delineation Manual, Technical Report Y-87-1, (January, 1987) as amended.

**WIRELESS TELECOMMUNICATIONS FACILITY** - A facility for the provision of personal wireless telecommunications services, including a mount, antenna, equipment shelter, and other related equipment.

## **APPENDIX B - Zoning Ordinance History**

(The year noted is the year the Planning Board approved the amendments for public hearing.)

### **1980**

Adopt the Wetlands Conservation ordinance (defeated)  
Adopt a moratorium on subdivision approval for one year (defeated)  
Adopt provisions of RSA 36-C, Interim Zoning, for one year (defeated)

### **1982**

Adopt zoning (defeated)

### **1987**

Zoning adopted

### **1988**

Add building permit fees  
Define requirements for road setbacks for corner lots  
Define conditions to be met to create back lots without minimum road frontage in minor subdivisions

### **1990**

Add the Eidelweiss Residential District  
Amend the definitions of structure, dwelling unit, multiple housing, home occupations, shoreline

### **1994**

Define uses within the Rural Residential District, Commercial District, and Village District, including uses allowed by Special Exception  
Amend description of Commercial District  
Amend description of Village District (defeated)  
Renumber & codify zoning ordinance  
Allow vehicular repair facilities by special exception (petitioned amendment)

### **1995**

Allow lots of 50 acres or more to be designated as Planned Unit Developments in all districts subject to conditions (defeated)  
Specify activities prohibited in a wetland area in the Wetland Conservation District

### **1997**

Amend definitions of dwelling unit, accessory building  
Amend requirements for minimum road frontage, deleting authority to create back lots without minimum required frontage

**1998**

Require a certified plot plan for building permit applications in the Eidelweiss Residential District

Add requirements for Planned Unit Developments in all districts

Amend Commercial district boundaries

Add section for telecommunication structures, towers, & antennae (defeated)

**2000**

Add Groundwater Protection section

**2002**

Specify 50' setback from water for residential structures

Add 75' setback from water for commercial structures

Amend expansion of non-conforming commercial business structure setback

Prohibit land or water area to be used as a junk yard or storage place, include Eidelweiss Residential District

**2003**

Add a 75' setback from water for structures and septic systems in the Eidelweiss Residential District

Define provisions and exceptions for tree & vegetative cutting in the Eidelweiss Residential District

**2004**

Amend road and shore frontage requirements (defeated)

Amend the definition of Lot

**2005**

Amend the definition of wetlands

Amend the requirements for manufactured housing

Amend the setback from water for residential structures to 75'

Prohibit commercial fuel stations in the Ground Water Protection district

Add a section defining wetland buffer setbacks and requirements

Amend the requirements for road and shore frontage

Adopt a Flood Plain Management ordinance

**2006**

Allow an extension in the height of existing tower structures

Amend the descriptions of the Commercial, Village, and Eidelweiss Residential districts

Remove description of Zoning Variance approval conditions

**2007**

Clarify requirements for lots of record in existence prior to the adoption of zoning

Clarify the permitted area of expansion for nonconforming structures

Amend ZBA powers & duties consistent with statute

Add description for Groundwater Protection District

Clarify permitted uses in the Commercial District  
Make height requirements consistent with height definition  
Restrict subdivision on Class VI roads  
Add driveway setback requirements to be consistent with building regulations  
Add or amend the following definitions: Lot, Special Exception, Variance  
Reorganize Section VII: Groundwater Protection Regulations to be consistent with DES model groundwater ordinance

## **2008**

Clarify building permit fees to maintain consistency with building permit fee schedule.  
Clarify the type, size, number, and placement of signs within the Village District of Eidelweiss.  
Clarify height limitations to include other exceptions as may be listed in the zoning ordinance such as cell towers and small wind energy systems.  
Add 5.12 Outdoor Wood-Fired Hydronic Heaters to regulate the use and installation as permitted by RSA 125-R.  
Add Section IX Small Wind Energy Systems to accommodate such systems in appropriate locations, while protecting the public's health, safety, and welfare as required by RSA 674:63.

## **2009**

Clarify the existing base area and roofline height for expansion of existing non-conforming structures.  
Expand the commercial district on the north and south sides of Route 16 and the northwest side of Route 113.  
Clarify the intent that accessory structures in the Eidelweiss Residential district be placed sixty-five (65) feet from the center line of the roadway.  
Allow the Planning Board to adopt and administer innovative land use controls pursuant to RSA 674:16 and 674:21,II.  
Add Section X Work Force Housing to comply with the provisions of RSA 674:58 et. Seq., as amended by SB 342 as enacted at the 2008 NH legislative session.

## **2010**

Define farms by reference to RSA 21:34-a as a permitted use in the rural residential district.  
Delete the section which presently allows and sets standards for Planned Unit developments in all districts so that they will no longer be permitted uses in any district.  
Update the groundwater protection ordinance to be consistent with state regulations and to add golf courses and race tracks as uses requiring conditional use permits from the planning board.  
Amend the definitions of the following terms: Accessory Building, Day Care Facilities, Dwelling Unit, Farm, Inns & Motels, Lodging House (Bed & Breakfast), Non-Conforming Use, and Structure.  
Delete the definitions for the following terms: Commercial Use, Light Industry, Plant Nurseries and Greenhouses.

Add definitions for the following terms: Farm Roadside Stand, Footprint, Living Area, Non-conforming Lot, and Open Space.

**2011**

Delete Permanent road stands and Plant nurseries and greenhouses from needing Special Exception in Section 4.2 Rural Residential District.

Update the Floodplain Management section to remain compliant in the National Flood Insurance Program.

**2013**

Updated the Floodplain Management section to include the new date of the Flood Insurance Study and Flood Insurance Rate Maps to remain compliant with the National Flood Insurance Program.

**2015**

Update and clarify setback regulations to include setback definitions for lots on Culs-de-sac.

Add Section XI Accessory Dwelling Unit to provide guidance for homes to add an apartment.

**2018**

Add definition of ‘Stonewall’.

Add definition of ‘Accessory Dwelling Units (ADUs)’.

Amend Article XI 11.1.1 Purpose *‘Ordinance is enacted in accordance with RSA 674:71-73 as an option for homeowners to offer separate and independent living space, including provisions for sleeping, cooking, eating and sanitation for their extended family or to offer small dwelling units as rentals.’*

Add Article XI 11.1.2. Authority *‘This Accessory Dwelling Unit Ordinance is adopted under the authority of RSA 674:71-73.’*

Amend Article XI 11.2 Applicability *‘Accessory Dwelling Units shall be permitted within all zoning districts, provided they comply with Section 11.4 of this Ordinance.’*

Amend Article XI 11.4 (A) Requirements *‘The ADU must be located in the same building as the principle residence, unless the lot meets the minimum required lot size for all zoning districts.’*

*In cases where the lot size meets or exceeds the minimum lot requirement, the ADU may be located in a detached structure, such as garage or barn, provided the existing structure conforms to the required setbacks for the zoning district.’*

Add Article XI 11.4 (F) *‘An interior door shall be provided between the primary dwelling unit and the interior/attached ADU.’*

Add Article XI 11.4 (G) *‘RVs, campers or mobile homes are not allowed for use as an ADU.’*

Add Article XI 11.4 (H) *‘Sale of ownership of the ADU, separate from the principle dwelling unit is prohibited.’*

**2022**

Add definition of ‘Footprint’

Add definition of ‘Cooking’

Add definition of ‘Sanitation’

Add definition of ‘Dwelling Unit’

Add definition of ‘Single Family House’