

# **TOWN OF MASON, NEW HAMPSHIRE**

**PLANNING ORDINANCE,  
(Zoning Ordinance)  
(Including Floodplain Development Ordinance)  
Enacted 1967  
Most Recent Amendment March 2016**

**FEMA Flood Hazard Boundary Maps  
Flood Insurance Rate Map (FIRM) Effective Date; September 25, 2009**

**Proposed Language for Planning Board Public Hearing on  
04/27/16**

**(Incorporating Amendments through March 2016)**

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# **THE PLANNING ORDINANCE OF 1967**

## **TOWN OF MASON**

(Incorporating Amendments through March 2011)

### **ARTICLE I: PREAMBLE AND TITLE**

#### **A. Preamble**

In pursuance of authority conferred by Chapter 674, Sections 16-50, and Chapter 672, Sections 10-14, of the State of New Hampshire Revised Statutes Annotated, 1955, and as it may be amended and for the purpose of promoting the health, safety, morals, prosperity, convenience or general welfare, as well as efficiency and economy in the process of development of the incorporated Town of Mason, New Hampshire, by securing from fire, panic and other dangers, providing adequate areas between buildings and various rights of way, by preserving the rural charm now attached to the town, the promotion of good civic design and arrangements, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements and by other means, now therefore, the following ordinance is hereby enacted by the voters of The Town of Mason, New Hampshire in official meeting convened.

#### **B. Title**

This ordinance shall be known and may be cited as the "Town of Mason Planning Ordinance of 1967" hereinafter referred to as "this Ordinance".

### **ARTICLE II: ESTABLISHMENT OF ZONING DISTRICTS**

#### **A. Districts**

For the purpose of this Ordinance the Town of Mason is divided into the following three zoning districts hereinafter referred as "District" and including the following: (1) Village Residential (VR) District; (2) General Residential, Agricultural, and Forestry (GRAF) District; (3) Historic Preservation (HP) District.

#### **B. Zoning Map**

The Zoning districts listed above shall be bounded as shown on the Map entitled "Town of Mason Zoning Map of 1967" which map is attached hereto and made part of this Ordinance and is hereinafter referred to as the "Zoning Map".

#### **C. Boundaries**

Unless otherwise indicated, District boundaries as shown on the Zoning Map, are the centerlines of highways and streets, the middle of the channel of waterways or other bodies of water, or where such boundary is also a town boundary then to the limits of the town boundary. Where boundaries are so indicated that they parallel the centerline of highways or streets, such

boundaries shall be interpreted as parallel thereto and the distance therefrom as shown on the Zoning Map. Any boundary within ten feet of a property line shall be considered as the property line. Where no dimension is given on the Zoning Map, distances shall be determined by the scale shown on the map.

### **ARTICLE III: INTERPRETATION AND APPLICATION**

#### **A. Interpretation**

In interpreting any provision of this Ordinance, it shall be held as the minimum requirement, adopted for the promotion of the public health, morals, safety or the general welfare. Whenever any requirement of this Ordinance is at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the highest standard, shall govern.

#### **B. Application**

The provision of this Ordinance shall apply to all uses, structures, and lots within the Town of Mason, New Hampshire, except those publicly owned by a unit of government. Whenever any existing use or structure is not in conformity with the provisions of this Ordinance, it may continue to exist subject to the provisions of Article VI. Any use not listed as a permitted use shall be construed to be prohibited. No conforming use or structure shall become nonconforming or any nonconforming use or structure become further nonconforming by any manner or action whatsoever except in accordance with the provisions of this Ordinance or by other legal action of a jurisdiction setting aside a provision of this Ordinance.

### **ARTICLE IV: GENERAL PROVISIONS**

- A. No junk yard or place for the storage of discarded machinery, vehicles, or other scrap materials shall be permitted in any Districts, except that after a public hearing in which evidence on both sides is heard, the Board of Adjustment shall have authority to decide whether the permit shall be issued or not, and then only in the GRAF District and as approved in accordance with New Hampshire Revised Statutes Annotated, 1955, as amended in 1965, Chapter 236:111-129, MOTOR VEHICLE JUNK YARDS.
- B. No owner or occupant of land shall permit fire or other ruins to be left, but shall remove the same within one year.
- C. Any use that may be obnoxious or injurious by reason of the production or emission of odor, dust, smoke, refuse matter, fumes, noise, vibrations, glare, or similar conditions, or that are dangerous to the comfort, peace, enjoyment, health or safety of the community or lending to its disturbance or annoyance are prohibited.
- D. The removal of clay, sod, loam, sand, or gravel is permitted in any District, provided that:
  - 1. No sod or loam is taken out of the town, (sod grown commercially on a sod farm is exempt from this restriction);
  - 2. Such removal shall require, as the Board of Selectmen deem necessary:
    - a. control of the unfinished level and grading;

- b. control of the placing of topsoil upon completion of excavation, seeding, and planting with approved materials to restore the area to a usable condition protected from erosion and reforested as necessary;
  - c. control of temporary and permanent drainage;
  - d. disposition of boulders, vegetation, stumps and other debris including unused material and any structure used in connection with the operation;
  - e. the construction of necessary fencing to protect against hazards;
  - f. vegetation to remain as a visual barrier;
  - g. hours of operation, except that, hours of operation will not be limited during the normal working day;
  - h. routing and means (including load limits) for transportation of materials;
  - i. posting of a performance bond with sufficient sureties or other security in the amount sufficient to cover items "a" through "f" and any other conditions said Board may require.
- 3. The removal of more than 1000 cubic yards of clay, sand, gravel or peat in any one year shall require in addition a permit from the Board of Selectmen.
- E. The production, cutting, and processing of forest products shall be permitted in any District provided that no processing or attendant operation, except cutting, shall be carried on or slash left within 100 ft. of any dwelling or residence, 50 ft. from the edge of any roadway, and 25 ft. from any other property line.
- F. In any District, no person shall be permitted to live in a cellar or basement for longer than one year pending completion of the upper portion of the residence.
- G. No privy, septic tank, or any portion of a sewage disposal area shall be constructed or maintained less than 75 feet from the edge of a public water body, from a well, from adjoining property, or from a building or dwelling other than that to which it is appurtenant.
- H. No waste waters or sewage shall be permitted to run free into a public water body or be discharged in any way that may be offensive or detrimental to the health of others. All such waste shall be conveyed away underground through use of an accepted sanitary system or in such a way that it will not be offensive or detrimental to health.
- I. All buildings and sanitary systems shall be constructed and maintained in accordance with the standards set and enforced by the New Hampshire State Department of Health and by the New Hampshire Water Pollution Commission. (A set of such standards is on file with the Town Clerk.)
- J. A private well or other private water system shall be constructed and maintained in accordance with the requirements of the Public Health Service Drinking Water Standards. (A set of such standards is on file with the Town Clerk.)
- K. If any proposed use is such as to attract vehicles, ample space shall be provided on the property to accommodate all such vehicles attracted by the use. If vehicles attracted by use may cause damage to roads because of weight, size, operation or spillage, a bond satisfactory to the Selectmen shall be posted to cover anticipated repair costs.
- L. (Deleted.)

- M. The use of land for the accommodation or storage of recreational vehicles and/or mobile homes for payment is prohibited. Any property owner or lessee may accommodate a recreational vehicle of a non-paying guest for a period not exceeding ninety (90) days in any one year. Mobile homes may be used as permanent dwellings only in the GRAF District, providing that they comply with all area, frontage, setback and other requirements as set forth for that District. Mobile homes shall be in accord with US Department of Housing and Urban Development Mobile Home Construction and Safety Standards. This Section shall apply only to mobile homes utilized for residential purposes and is not intended to restrict the storage or parking of a single recreational vehicle. A single mobile home may be stored on the premises of the owner during periods of non-use, upon approval of the Board of Selectmen.
- N. Dwellings shall require a full frost-free foundation which complies with the current Mason Building Code.
- O. Commercial advertising signs in Mason, with the exception of directional signs described in paragraph O.1.b below, must be on the property on which the enterprise being advertised is located. Such signs shall conform to the following provisions:
  - 1. Signs in the GRAF district (as defined in Article V) in Mason are subject to these stipulations:
    - a. Signs advertising enterprises in Mason must conform to one of the following classes:
      - 1. Class 1: A single free-standing sign is allowed. The total area of the signboard shall not exceed fifteen square feet in area; both sides of the signboard may be used. The top of the signboard shall not exceed twelve feet in height.
      - 2. Class 2: Signs affixed to the building housing the enterprise are allowed. The total area of the sign or signs shall not exceed fifteen square feet in aggregate area. None of these signs shall be attached to or protrude above the roof.
      - 3. Class 3: A single temporary sign is allowed, only for purposes of indicating that the property is for sale or lease. This sign may be either: free-standing, in which case it must conform to the provisions in paragraph O.1.a.1; or affixed to the building, in which case it must conform to the provisions in paragraph O.1.a.2.
    - b. In addition, directional signs may be placed on property other than that on which the enterprise is located, but only with the consent of the owner of the property. These signs shall not be in the town or state right of way. Each sign is restricted to no more than one and one-half square feet in area. For a given enterprise, no more than one sign shall be placed within any two-mile section of road; with the exception that if directional signs are required at more than one corner within a two-mile section of road, such additional signs shall be allowed. No enterprise shall have more than twelve directional signs within the town of Mason.



- c. No sign shall be neon, animated, or flashing. All illumination of signs shall conform to the requirements of Article XXIII, Outdoor Lighting Ordinance.
    - d. No sign for a business shall be positioned in such a manner that it impedes the line of sight of drivers in or on public ways.
  - 2. Signs in the VR district (as defined in Article V) in Mason shall comply with the requirements listed in O.1 and further shall be limited to fifteen square feet in aggregate area, not including a temporary sign as defined in paragraph O.1.b.
  - 3. Signs in the Historic District (as defined in Article V) in Mason shall comply with the requirements listed in O.1, shall be limited to fifteen square feet in aggregate area, not including a temporary sign as defined in paragraph O.1.b, and must be approved by the Historic District Commission.
  - 4. Existing signs on enterprises in Mason at the time of this amendment are exempt from the amended provisions. However, if an existing sign is changed or removed, by intent or act of God, any replacement must conform to the amended provisions.
- P. Conventional accessory structures such as play equipment, tent, mail box, outdoor fireplace, and similar structures normally found on such lots, also roadside stands, fences, warning signs, walls, trees, shrubs and all vegetation may be located on the lot in any location that does not interfere with the normal flow of traffic on a public right-of-way.

## **ARTICLE V: ZONING DISTRICTS**

The following Districts shall be established for the following purposes and shall be subject to the following provisions:

### **A. The Village Residential (VR) District**

The Village Residential (VR) District shall enjoy the following provisions: (It shall be mainly a District of dwellings.)

- 1. One-family, year-round, seasonal or farm dwelling.
- 2. Home produce and products may be bought and sold, and exposed for sale in this District.
- 3. Dwellings may be used to house such uses by the owner or tenant as offices for doctor, engineer, architect, lawyer, real estate and insurance, or other recognized profession, or such home occupation as hairdressing, dressmaking, manufacture of craft products for sale, or manufacture of food products, provided: (a) official residence shall be maintained on the premises in question, (b) professional home-occupation use shall not occupy more than forty percent of the floor area of the dwelling, and (c) not more than one non-resident shall be employed therein.
- 4. Uses by Special Exception as outlined in Article VIII, Section A2.

5. Accessory buildings such as barn, shed, kennel, private garage, or similar outbuildings normally found in residential and farm areas and not involving the conduct of a business, except for the exclusive sale of home produce and products.
6. Frontage and Lot Area. The minimum frontage shall be 200 ft. on a Class V highway or better and the minimum lot size shall be 88,000 sq. ft. per dwelling.
7. Front, Side and Rear Set Back. No building shall be located within 35 ft. of any right-of-way or lot line.

**B. The General Residential, Agricultural, And Forestry (Graf) District**

The General Residential, Agricultural, And Forestry (GRAF) District shall enjoy the following provisions: (It shall be mainly a District of farms, dwellings and woodlands.)

1. Any use permitted in the VR District subject to the same provisions of use.
2. Mobile homes (excluding recreational vehicles) when placed on a permanent foundation as set forth in Article IV, Section M of this Ordinance.
3. General farming, including horticulture, dairying, livestock and poultry raising, and other agricultural enterprises or uses, general forestry and granite quarrying.
4. Frontage and Lot Area. A conventional lot shall be 350 ft. on a Class V highway or better and the minimum lot area shall be 174,240 sq. ft. per dwelling unit.

Notwithstanding the frontage and lot area imposed by this section, a lot approved by the Planning Board prior to March 11, 2008 shall be deemed conforming to the minimum size and frontage requirements of the GRAF zone.

5. Front, Side and Rear Set Back. No building shall be located within 35 ft. of any road right-of-way or of any other lot.

**C. The Historic Preservation (Hp) District**

The Historic Preservation (HP) District shall enjoy the following provisions: (The purpose shall be to preserve and protect from encroachment the historical heritage of buildings and lands in the District.)

1. Any use permitted in the VR District subject to the same provisions of use and area, with the additional provision that the existing colonial or other architectural treatment of the District shall be maintained in any alterations or improvements to existing buildings or in the construction of new buildings.

**ARTICLE VI: NONCONFORMING USES AND STRUCTURES**

- A. Any nonconforming use or structure may continue in its present use and form, except that any nonconforming use or structure may not be:
  1. Altered for use for a purpose or in a manner substantially different from the use to which it was put before alteration.

2. Changed to another nonconforming use.
3. Re-established after discontinuance for one year except to a use and structure conforming to the District in which it is located.

## **ARTICLE VII: ADMINISTRATION AND ENFORCEMENT**

### **A. Duty**

It shall be the duty of the Selectmen and they are hereby given power and authority to administer and enforce the provisions of this Ordinance. The Selectmen shall appoint a Building Inspector to accept and issue permits and inspect, but not to enforce this Ordinance.

### **B. Permit Issuance**

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

### **C. Permit Required**

After passage of this Ordinance, it shall be unlawful to erect and use any structure, sign, or building, or relocate any building (except an accessory building less than 200 sq. ft. in size not for human occupancy), in any District without first obtaining a permit from the Building Inspector.

### **D. Remodeling**

No permit shall be required for remodeling or repairing where the purpose for which the building or structure is to be used is not changed, or the building is not enlarged or the use extended.

### **E. Enforcement**

Upon any well-founded information that this Ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of this Ordinance by notifying the violator and by seeking an injunction in Superior Court.

## **ARTICLE VIII: BOARD OF ADJUSTMENT**

A Board of Adjustment is hereby created and its members shall be appointed by the Board of Selectmen in accordance with, and shall have the terms and powers hereby conferred upon the Board of Adjustment by the provisions of Chapter 673:3 and 674:3, New Hampshire Revised Statutes Annotated, 1955, and as may be amended. Hereafter as terms expire or vacancies occur, the Board of Selectmen shall be responsible for filling vacancies and maintaining full membership on the Board of Adjustment. The Board of Adjustment shall adopt rules to govern its proceedings in accordance with the provisions of this Ordinance, and the provisions of Chapter 673, New Hampshire Revised Statutes Annotated, 1955, and as may be amended. The Board of Adjustment may hear and decide a case where it is alleged there is an error in any order, requirement, decision, or determination made by the Selectmen or the Building Inspector in the enforcement of this Ordinance.

- A. In addition to the general powers granted said Board by said Chapter 674:33, it may, in harmony with and subject to its provisions:

1. Waive the Residential frontage requirements where there are unusual conditions of street curvature. In such cases, however, the average width of the lot shall be equal to or greater than the frontage requirements.
2. Special Exceptions: The following uses may be permitted as special exceptions in the districts designated, subject to the satisfaction of the requirements and standards set forth herein in addition to all other requirements and standards of this Ordinance. The Board of Adjustment shall have the power to grant special exceptions after due notice and hearing, and each case shall be deemed to be unique and shall be considered individually.
  - a. Uses Permitted by Special Exception in the Historic Preservation District: church, school and municipal facility.
  - b. Uses Permitted by Special Exception in the Village Residential District: any use permitted in the Historic Preservation District, plus inn, tourist home or lodging house (including such retail business within these permitted buildings as are conducted exclusively for the convenience of the residents or guests), retail store or service establishment (the principal activities of which shall be the offering within the building or on the premises of goods or services at retail for the use or consumption within the building or off the premises), restaurant, a business or professional office, bank, indoor live theater or hall, health care facility.
  - c. Uses Permitted by Special Exception in the General Residential, Agricultural and Forestry District: any use permitted in the Village Residential District plus light manufacturing enterprise, automobile repair shop, service station, recycling center, office building, public utilities (telephone exchange, transformer station, and pumping station) and seasonal outdoor entertainment use (limited to three (3) or less events per week from Memorial Day Weekend to and including Columbus Day Weekend, ending no later than eleven (11) PM holidays and weekends and ten (10) PM on weekdays).
  - d. Standards:
    - (A) Before such approval shall be given, the Board of Adjustment shall determine:
      1. that the use will be in harmony with and promote the general purposes and intent of this ordinance;
      2. that the safety, the health, the welfare and the order of the Town will not be adversely affected by the proposed use and its location;
      3. that the use will not prevent the orderly and reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located or of permitted or legally established uses in adjacent use districts;

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4. that the use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use districts.

(B) In making a decision, the Board of Adjustment shall determine:

1. that the intent of the preamble is upheld;
2. that the character of the existing and probable development of uses in the district, and the peculiar suitability of such district for the location of any of such permissive uses;
3. that the most appropriate use of the land is encouraged and that there will be no devaluation of surrounding properties;
4. that the location of the proposed use will not overburden the public streets or highways;
5. that there will be adequately surfaced space for purposes of off-street parking of vehicles incidental to the use, and whether such space is reasonably adequate and appropriate and can be furnished by the owner of the plot sought to be used within or adjacent to the plot wherein the use shall be had;
6. that there will be adequate and proper facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;
7. that the use or materials incidental thereto, or produced thereby, will not give off obnoxious gases, odors, smoke or soot;
8. that the use will not cause excessive emission of electrical discharges, dust, light, vibration or noise;
9. that no hazard to life, limb or property because of fire, flood, erosion or panic will be created by reason of, or as a result of the use, or by the structures to be used therefore, or by the inaccessibility of the property or structures thereon for the convenience of entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot;
10. that the use, or the structures to be used therefore, will not cause an overcrowding of land or undue concentration of population;
11. that the plot area is sufficient, appropriate and adequate for the use and the reasonable anticipated operation and expansion thereof;

12. that the use to be operated is not unreasonably near to a church, school, theater, recreational area or other place of public assembly; and,
13. that the use will be adequately landscaped including greenbelts and or setbacks as necessary to preserve the rural charm.

#### **ARTICLE IX: AMENDMENT**

This ordinance may be amended in accordance with the provisions of Chapters 675:3 through 675:9, New Hampshire Revised Statutes Annotated, 1955, and as may be amended.

#### **ARTICLE X: PENALTY**

Every person, persons, firm or corporation violating any of the provisions of this Ordinance shall be fined not more than Fifty Dollars (\$50) upon conviction for each day such violation exists.

#### **ARTICLE XI: SAVING CLAUSE**

The invalidity of any provision of this Ordinance shall not affect the validity of any other provision.

#### **ARTICLE XII: WHEN EFFECTIVE**

This Ordinance shall take effect immediately upon its passage.

#### **ARTICLE XIII: (DELETED)**

#### **ARTICLE XIV: DEFINITIONS**

- A. For the purposes of this Ordinance, certain terms, phrases and words shall have the meaning given herein. Words used in the present tense include the future; the singular includes the plural and the plural, the singular; the word "used" shall be constructed as though followed by the words "or intended or designed to be used"; the words "building", "structure", "lot", or "premises" shall be constructed as though followed by the words "or any portion thereof", and the word "structure" includes the word "building". The word "shall" is always mandatory and not merely directory.
1. **Accessory Building** - a detached building subordinate to the main building on a lot and used for purposes customarily incidental to those of the main building.
  2. **Accessory Use** - a land use located on the same lot which is incidental and subordinate to the main structure or use of the land.
  3. **Building** - a structure having a roof and intended for the shelter, housing or enclosure of persons, animals or chattel.
  4. **Dwelling** - one or more living or sleeping rooms arranged for the use of one or more individuals living as a single housekeeping unit with cooking, living, sanitary and sleeping facilities.

5. **Family** - one or more persons related by blood, marriage or adoption, or maintaining a single household on the premises and living as a single housekeeping unit.
6. **Granite Quarrying** - the extraction and processing of granite, but not including stone crushing.
7. **Home Produce and Products** - includes everything of an agricultural nature grown, produced, conditioned or otherwise carried on the property of the resident; also such articles that are manufactured or altered by members of the household or the bona-fide resident of the property.
8. **Junk** - any old metals; old bottles; cotton, woolen, or wood-mill wastes; unfinished cloth; unfinished cotton or woolen-mill yarns; old paper products; old rubber products; two or more unregistered motor vehicles which are unfit for use on highways, used parts and materials for motor vehicles; and other second-hand articles.
9. **Lot** - a parcel of land occupied or capable of being occupied by one structure or use and the structures or uses accessory thereto including such open spaces and setbacks as are required by this Ordinance. A lot may or may not be the land shown or described as a lot on a recorded deed or plan.
10. **Mobile Home** - a manufactured residential dwelling unit designed for transportation after fabrication, on streets or highways, on its own wheels or on a flatbed or other trailer, and arriving on the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly, location on a foundation, connections to utilities and the like. A recreational vehicle is not to be considered a mobile home.
11. **Recreational Vehicle** - a travel trailer, motor home, camper, van, or the like.
12. **Permanent Resident** - a family who have used any building continuously as a residence for a period of six months or more.
13. **Public Hearing** - a hearing as defined by New Hampshire Revised Statutes Annotated, 1955, Chapter 675:7, and as amended.
14. **Right-of-Way** - all state, town and federal highways and the land on either side of same as covered by statutes to determine the width of rights of way.
15. **Seasonal Building** - a building of a design or character suitable for seasonal purposes, or not more than 180 days occupancy in any one calendar year.
16. **Sign** - any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public.
17. **Structure** - anything constructed or erected, the uses of which require location on the ground and includes a building or sign.
18. **Structure, Nonconforming** - a structure which is lawfully maintained at the time this Ordinance became effective and which does not conform with the regulations of the District in which it is located.

19. ***Substantially Different Use*** - a use not permitted within the District in which the particular use in question is located.
20. ***Inn, Motel, Tourist Home or Lodging House*** - a building, or portion thereof, or a group of buildings on a single lot, intended to be used for temporary accommodation, consisting of not more than six (6) lodging units with or without meals and which major provision for cooking may be made in a central kitchen, but may not be in the individual rooms or suites.
21. ***Rooming or Boarding House*** - a building or premises, other than an inn, motel, tourist court or lodging house, where rooms are let and where meals may be regularly served by prearrangement for compensation; not open to transient guests, in contrast to restaurants and tourist homes, which are open to transients.
22. ***Travel Trailer*** - a vehicle designed for temporary recreational use and not intended for residential purposes.
23. ***Use, Nonconforming*** - a use which lawfully occupied or used a structure or lot at the time this Ordinance became effective and which does not conform with use regulations of the District in which it is located.
24. ***Year-Round Building*** - a building of a design or character suitable for year-round purposes, or more than 180 days occupancy in any one calendar year.
25. ***Service Station*** - a structure or lot used for the sale of gasoline and minor servicing. No storage beyond seventy-two (72) hours of such motor vehicles on the premises other than those in process or awaiting repair or pickup after repair.
26. ***Auto Repair Shop*** - a shop or garage for major repair of motor vehicles and sale of gasoline. All vehicles in storage shall be screened from public view.
27. ***Store*** - an establishment where merchandise is sold.
28. ***Establishment*** - a place of business together with its employees, merchandise, etc.
29. ***Recycling Center*** - a structure or area, singular or in combination, devoted to the collection, packaging and dispersal of refuse (excluding garbage). It must be enclosed by a fence not less than ten (10) feet high, surrounded by a natural buffer zone not less than two hundred (200) feet in depth on all sides and situated on a minimum ten (10) acre site. The operating equipment shall not exceed the height of the buffer zone.
30. ***Light Manufacturing Enterprise*** - a facility limited to six (6) employees, not greater than 2,500 enclosed square feet, subject to all aforementioned standards; e.g. noise, pollution, waste generation.
31. ***Commercial Use*** - the buying and selling of goods and services in retail businesses, wholesale buying and selling, and financial establishments.
32. ***Industrial Use*** - the manufacture, fabrication, processing, reduction or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to



change the form, character or appearance thereof, and including storage elevators, truck storage yards, warehouses, wholesale storage and other similar types of enterprise.

## **ARTICLE XV: DISTRICT BOUNDARIES**

### **A. Boundaries of Village Residential (VR) District**

Due east from the intersection of Darling Hill Rd. and the Mason town line for exactly one mile; thence, south-south-easterly in a direct line to the intersection of the Boston and Maine RR and Jackson Rd., thence southerly along the railroad tracks to the Mason town-line; westerly along the Mason line to Mason Brook, thence northerly along Mason Brook to a point due east of the southeast corner of Greenville, thence due west to Greenville's southeast Corner, and northerly along the Mason town-line to Darling Hill Rd. The area included in the HP District is not part of the VR District.

### **B. Boundaries of Historical Preservation (HP) District**

From a point on Mason Brook 500 ft. north of Merriam Hill Rd. in a straight line northeasterly to a point on Darling Hill Rd. due west of the intersection of Meeting House Hill Rd. and Scripps Lane; thence, easterly across Meeting House Hill Rd. to a point 500 ft. northeasterly on Scripps Lane; southwesterly then southeasterly along Meeting House Hill Rd. and Valley Rd. keeping 500 ft. from the road at all times to a point due east of the intersection of Cascade Rd. and Valley Rd., due west to the intersection, westerly along Cascade Rd., to Mason Brook, thence northerly along Mason Brook to point of origin.

### **C. Boundaries of the General Residential, Agricultural, and Forestry (GRAF) District**

The boundaries of the GRAF District shall be the Town Boundaries, excluding the land included in the VR and HP Districts.

## **ARTICLE XVI: WETLANDS CONSERVATION DISTRICT ORDINANCE**

### **A. Purpose And Intent**

In the interest of public health, safety, and welfare, the regulations of this District are intended to guide the use of areas of land with extended periods of high water tables:

1. To prevent the development of structures and land uses on naturally occurring wetlands which would contribute to pollution of surface and groundwater.
2. To prevent the destruction of natural wetlands which provide flood protection, recharge of groundwater supply, and augmentation of stream flow during dry periods.
3. To protect potential water supplies and existing aquifers (water-bearing strata) and aquifer recharge areas.
4. To prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities.

5. To encourage those uses that can safely and appropriately be located in wetland areas.

**B. District Boundaries**

1. Wetlands Conservation District Defined

The Wetlands Conservation District is hereby determined to be all surface waters and wetlands as determined by the following criteria. The edge of the wetland shall be defined by NH RSA 482-A:2, X as established and defined by the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, Environmental Laboratory, Department of the Army, 1987:

“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.

2. Delineation of Wetlands

Wetlands in the Town of Mason shall be determined in accordance with NH RSA 482-A and the criteria referenced under Article XVI.B.1 through site specific delineation conducted by a soil or wetland scientist certified by the State of New Hampshire. A certified soil or wetlands scientist determination is not required for minimum impact projects unless they are part of a subdivision.

3. Wetlands Incorrectly Delineated

In the event that the Planning Board or the Zoning Board of Adjustment disputes the delineation of an area as determined by the applicant’s certified soil or wetland scientist, the Planning Board or Zoning Board of Adjustment may, at the expense of the applicant, retain its own soil or wetland scientist certified by the State of New Hampshire to delineate the area in question.

**C. Relation To Other Districts**

In all cases where the Wetlands Conservation District conflicts with the provisions of another zoning district in the Town of Mason, that district whose regulations are more restrictive shall apply.

**D. Permitted Uses**

Any use that does not result in the erection of any structure or alter the surface configuration by the addition of fill and that is otherwise permitted by the zoning ordinance:

1. Forestry, tree farming, using best management practices in order to protect streams from damage and to prevent erosion and sedimentation;
2. Cultivation and harvesting of crops according to recognized soil conservation practices, including the protection of wetlands from pollution caused by fertilizers, pesticides, and herbicides used in such cultivation;

3. Water impoundments and construction of wells for water supply;
4. Maintenance of existing drainage ways - streams, creeks, or other paths of normal runoff water;
5. Wildlife habitat management;
6. Parks and such recreational uses as are consistent with the purposes and intent of this ordinance;
7. Conservation areas and nature trails;
8. Open space as permitted by subdivision regulations or zoning ordinance.

**E. Special Exceptions**

Special exceptions may be granted by the Board of Adjustment for the following uses within the Wetland Conservation District. The Mason Conservation Commission will be requested to comment on applications requiring special exception.

1. Streets, roads, and other access ways and utility rights of way easements including power lines and pipe lines if essential to the productive use of land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the wetlands;
2. The undertaking of a use not otherwise permitted in the Wetland Conservation District, which may include the erection of a structure, dredging, filling, draining, or otherwise altering the surface configuration of the land, if it can be shown that such proposed use will not conflict with the purpose and intentions of this ordinance and if such proposed use is otherwise permitted by the zoning ordinance. Proper evidence to this effect shall be submitted in writing to the Board of Adjustment and shall be accompanied by the findings of a review by the Hillsborough County Conservation District.

**F. Special Provisions**

1. No septic tank or leach field may be constructed or enlarged closer than seventy-five (75) feet to any wetland.
2. Wetland areas may be used to satisfy minimum lot areas and setback requirements provided that at least one and one-half acres per lot exist that can fulfill all state standards for sewage disposal and water supply. For on-site septic tank and leach field systems, this shall include both a primary and secondary leach field location.

**ARTICLE XVII: GROWTH MANAGEMENT ORDINANCE**

Enacted September 1987, repealed March 1991.

**ARTICLE XVIII: FLOODPLAIN DEVELOPMENT ORDINANCE**

The Federal Emergency Management Agency (FEMA) New Hampshire Model Floodplain Ordinance for Communities with Special Flood Hazard Areas, Meets the Minimum Requirements of Section 60.3(b) of

the National Flood Insurance Program Regulations, dated February 21, 1975, as reissued with an effective date of December 1, 1992, and any revisions thereafter, are declared to be a part of this ordinance and are hereby incorporated by reference. The text of this model ordinance is reproduced below in Appendix A. Copies of later revisions, as they become available, will be kept for public inspection at the Town Offices.

## **ARTICLE XIX: TELECOMMUNICATIONS FACILITIES ORDINANCE**

### **ITEM I AUTHORITY:**

This Ordinance is adopted by the Town of Mason on March 8, 2005 in accordance with the authority granted by the New Hampshire Revised Statutes Annotated 674:16 and 21, II.

### **ITEM II PURPOSE:**

These regulations have been enacted in order to establish general guidelines for the siting of towers and antennas and to enhance and fulfill the following goals:

1. Preserve the authority of the Town of Mason to regulate and provide for reasonable opportunity for the siting of telecommunications facilities.
2. Enhance the ability of providers of telecommunications services to provide such services to the community effectively and efficiently.
3. Reduce the adverse impacts such facilities may create on, including, but not limited to: migratory bird flight corridors, impacts on aesthetics, environmentally sensitive areas, historically significant locations, health and safety by injurious accidents to person and property, and diminution of property values.
4. Preserve unique viewsheds and scenic values.

### **ITEM III DEFINITIONS:**

1. Antenna - Means any exterior apparatus designed for telephonic, radio, television, personal communications service, pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any frequency and bandwidth.
2. Average Tree Canopy Height - Means the average height found by inventorying the height above ground level of all trees over 20 feet in height for a radius of 150 feet.
3. Tower - Means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas.
4. Telecommunications Facilities - Means any antenna, tower, or other structure intended for use in connection with the transmission or reception of radio or television signals or any other electromagnetic transmission/receptions.

### **ITEM IV LOCATION OF TELECOMMUNICATIONS FACILITIES**

Telecommunications facilities may be permitted in all districts, provided that they are camouflaged, hidden or disguised. Historic Districts are specifically exempted from this

provision. In no case, however, shall such a facility be sited in a location that would impact any scenic view.

#### ITEM V PERMITTED USES

1. ***Principal or Secondary Use*** - Telecommunications facilities may be considered either principal or secondary uses. Having an existing-permitted use on site shall not preclude the addition of a facility as a Secondary Use as long as all other provisions of the Ordinance are met. A different existing use or an existing structure on the same lot shall not preclude the installation of a facility on such lot. For purposes of determining whether the installation complies with district development regulations, including but not limited to setback and lot coverage requirements, the dimensions of the entire lot shall control, even though the facility may be located on leased parcels within such lots. Facilities that are installed in accordance with the provisions of this Ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

Any alteration of the original permitted use and device configuration of the facility will require a new approval.

2. ***Amateur Radio; Receive-Only Antennas*** - This Ordinance does not apply to any antenna used exclusively in the amateur radio services that is eligible under the Amateur Radio Preemption, 101 FCC 2nd 952 (1985).
3. ***Essential Services & Public Utilities*** - Telecommunication facilities shall not be considered infrastructure, essential services, or public facilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunications is a use of land, and is addressed by this Section.

#### ITEM VI CONSTRUCTION PERFORMANCE REQUIREMENTS

1. ***Federal Requirements*** - All facilities must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate such facilities. If such standards and regulations are changed, the owners of facilities governed by this Ordinance shall bring these into compliance within six (6) months of the effective date of the changes, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with any changes shall constitute grounds for the removal of the tower or antenna at the owner's expense, in accordance with Section X through the execution of the posted security.
2. ***Building Codes/Safety Standards*** - To ensure the structural integrity of towers and antennas, all facilities will be inspected every (one, two, three? Years) by an engineer approved by the Town, with the cost to be paid by the owner. The engineer will submit a report to the Town. If the report concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, the owner will receive notice that he/she has 30 days to bring such tower into compliance with the standards. If the owner fails to comply within 30 days, such action shall constitute an abandonment

and grounds for the removal, in accordance with Section X, of the tower or antenna, at the owner's expense through execution of the posted security.

3. ***Additional Requirements for Telecommunications Facilities*** - These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.
4. ***Height*** - All efforts should be made to keep tower height at a minimum; in no case shall a tower exceed 200 feet.
5. ***Setbacks and Separation*** - In addition to compliance with the minimum zoning district setback requirements for all structures, towers shall be set back a distance equal to 125% of the height of the tower from all property lines.
6. ***Security Fencing*** - Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device.
7. ***Landscaping*** - A buffer shall be provided that effectively screens the view of the compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the compound. Natural vegetation is preferred.

In locations where the visual impact of the compound would be minimal or non-existent, the landscaping requirement may be reduced or waived entirely.

Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

8. ***Camouflaging*** -
  - a. At a tower site, the design of the buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment.
  - b. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment visually unobtrusive.
9. ***Balloon Test*** - The applicant shall provide notice of a date on which a balloon (or balloons) will be floated at the proposed site, and provide pictures from all locations around town and within 20 miles from which the balloon(s) is visible.

## ITEM VII CONDITIONAL USE PERMITS

1. ***General*** - Telecommunications Facilities are permitted only after obtaining a Conditional Use Permit from the Planning Board. All such uses must comply with other applicable ordinances and regulations of the Town of Mason.

2. ***Issuance of Conditional Use Permits*** - In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties, and preserve the intent of this Ordinance.
3. ***Permit Renewal*** - Permits shall be renewable annually. When possible, this time frame shall be consistent with the timing for performance bond renewal.

#### **ITEM VIII PROCEDURE ON APPLICATION**

The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4.

All towns within 20 miles of the proposed location will be notified of the public hearing, by certified mail, to be paid by the applicant. A notice will also be posted in the newspaper customarily used for legal notices by these municipalities. Such notice shall be published not less than 7 days nor more than 21 days prior to the public hearing date.

All decisions shall be rendered in writing. A denial must be based upon substantial evidence contained in the written record.

#### **ITEM IX PLAN REQUIREMENTS**

Each applicant requesting a Conditional Use Permit under this Ordinance shall submit a scaled plan showing or accompanied by the following information:

1. Title block that shows the name of the development or project.
2. North arrow, date of plat, scale; name, address and seal of all persons preparing the plat.
3. Signature block for Planning Board endorsement.
4. Vicinity sketch and zoning district(s).
5. Total area of the parcel in acres and square feet.
6. Lot frontage.
7. Boundary lines and approximate dimensions and bearings.
8. Tax map and lot numbers.
9. Locations and descriptions of any existing or proposed easements, deed restrictions, or covenants.
10. Physical features on the site and within 200 feet of the site.
11. Soil information based on the Hillsborough County Soil Survey.
12. All natural features, such as streams, ponds, wetlands, etc.

13. Existing and proposed grades and contours, and base flood elevations.
14. Shape, size, height, location and use of existing and proposed structures on the site.
15. Existing buildings and structures within 500 feet of the site.
16. Access to the site, with location and width of existing and proposed driveways.
17. A driveway permit been granted from either the NH DOT or the Town of Mason.
18. Locations, names, right-of-way and travel widths of any existing and proposed roads on the property and within 200 feet of the site.
19. Final road profiles and cross sections for any new roads.
20. Locations and sizes of all electric and telephone lines on the site.
21. Existing and proposed fire hydrants and/or fire ponds.
22. Existing and proposed methods of handling stormwater runoff, and the direction of the flow indicated by arrows.
23. Sizes and locations of all stormwater drainage lines, catch basins, drywells, drainage ditches, retention basins, and culverts.
24. Location, types, and sizes of all existing and proposed landscaping and screening.
25. Location of any proposed lighting.

Other Information Required:

In order to assess compliance with this Ordinance, the Planning Board shall require the applicant to submit the following prior to any approval by the Board:

1. Propagation map showing proposed radio frequency coverage.
2. Photographic documentation of the balloon test(s).
3. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
4. The applicant shall submit written proof that it has conducted an evaluation of any requirements of the National Environmental Policy Act (NEPA) pertaining to the proposed facility, as may be required under applicable FCC rules, and the results of any such evaluation. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and/or NEPA, the applicant shall submit the EA or EIS to the Board prior to the beginning of the federal 30-day comment period; the Town proceedings with respect to the proposed facility shall become part of the FCC application requirements.
5. The applicant will provide the Board with the following information:



- a. the number of sites for telecommunication facilities each provider will require;
  - b. sites outside of the Town for the particular coverage area that are being considered;
  - c. how the siting of a telecommunication facility will affect the ability to allow a competitor's antennas on the same property;
6. The applicant will provide the Board with studies of alternative sites in Town that have been considered for siting.
7. The applicant shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other wireless telecommunication providers. An opportunity for co-location is not to be considered a justification for excessive height of towers. Co-location opportunities shall also not exclude the investigation of alternative sites.
8. The applicant will provide the Board with any copies of the federal license from the FCC proving that they, or their contracted client, are eligible to deploy their systems under the Federal Telecommunications Act of 1996.
9. Upon request, the applicant will provide:
  - a. detailed maps showing all of the carrier's current externally visible tower and monopole locations in the state within a 20-mile radius, both active and inactive; and
  - b. site descriptions for each of the above locations showing the antenna height and diameter, and all externally visible structures.
10. The applicant will submit an agreement to the Town to the effect that the Town will be held harmless for any extraordinary fire or safety events.

#### **ITEM X WAIVERS**

1. Any portion of these regulations may be waived or modified when, in the opinion of the Board, strict conformity would pose an unnecessary hardship to the applicant and such waiver would not be contrary to the spirit and intent of these regulations.
2. Conditions - In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.
3. Procedures - A petition for any such waiver shall be submitted in writing by the applicant for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant.

#### **ITEM XI BONDING AND SECURITY INSURANCE**

The applicant shall provide a bond to the Town in an amount that would be sufficient to cover the costs of removal and disposal of the facility components. The Planning Board shall set the form and amount of the security. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed facilities prior to construction.

The term of the bond shall be negotiated with the Planning Board and administered by the Selectmen. In addition, if the Board requires an engineering assessment in order to set the amount of the bond, the cost shall be borne by the applicant.

#### **ITEM XII REMOVAL OF ABANDONED ANTENNAS AND TOWERS**

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days, the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

In cases of co-location, the agreement shall make clear which owner is responsible for the removal of which facilities and pieces of equipment.

#### **ITEM XIII ADMINISTRATION AND ENFORCEMENT**

It shall be the duty of the Board of Selectmen, and they are hereby given the power and authority, to enforce the provisions of this ordinance. The Selectmen may appoint an agent to enforce this ordinance.

Upon any well-founded information that this ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other legal action.

#### **ITEM XIV SEVERABILITY**

The invalidity of any provision of this ordinance shall not affect the validity of any other provision.

#### **ITEM XV APPEALS**

Pursuant to RSA 676:5, any decision made under this ordinance cannot be appealed to the Board of Adjustment, but to the superior court as provided by RSA 677:15.

### **ARTICLE XX: ACCESSORY DWELLING UNIT ORDINANCE**

An Accessory Dwelling Unit (ADU) is a second dwelling unit permitted by this ordinance to be located on the same lot as the principal dwelling unit. The ADU may be attached or interior to the principal dwelling unit. It is a complete housekeeping unit with independent cooking, living, sanitary and sleeping facilities.

**A. Purpose and Intent**

1. To provide expanded rental housing opportunities in the Town of Mason, including rental opportunities that qualify as workforce housing.
2. To provide flexibility in household arrangements by permitting a second dwelling unit on a single residential lot, to the benefit of the owner occupants and tenants (elderly persons, extended family members, etc).
3. To preserve the single-family residential character of the neighborhood by ensuring that the accessory dwelling unit preserves the appearance of the principal dwelling unit as a residence, is permitted only on owner-occupied property, and does not endanger the health, safety and welfare of the public.

**B. Authority**

This ordinance is adopted under the authority of RSA 674:21, Innovative Land Use Controls and the authority of NH RSA 674:58 – 61, Workforce Housing.

RSA 674:58, IV states: "Workforce housing" ... means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

Rental housing provided by ADUs is not constructed in developments, but by individual landowners. Landowners designing ADUs shall be made aware of these criteria; however, these shall not be requirements for ADUs under this Ordinance.

**C. Requirements and Limitations**

1. An accessory dwelling unit shall be secondary and accessory to a principal single family dwelling unit.
2. Accessory dwelling units may be established in the General Residential, Agricultural and Forestry zone (GRAF), the Village Residential zone (VR) or the Historic Preservation district (HP).
3. One accessory dwelling unit shall be allowed on a lot containing a single residential structure.
4. The ADU shall be similar in appearance to the principal dwelling unit and not change the character of the principal dwelling unit as a single family residence.
5. In relationship to the principal dwelling unit, an ADU may be:
  - a. Interior to the principal dwelling.
  - b. Attached to the principal dwelling.

6. Accessory dwelling units shall be designed to allow for reincorporation with the principal dwelling unit.
7. The owner of record of the principal dwelling unit must reside in either the principal dwelling unit or the accessory dwelling unit.
8. Size limitations:
  - a. The gross living area above ground (GLAAG) of an ADU shall be a minimum of 350 square feet for a 1-bedroom ADU, 500 sq. ft. for a 2-bedroom ADU and a maximum of 1,000 sq. ft. for any ADU.
  - b. Attached accessory dwelling units shall occupy no more than 40% of the GLAAG of the principal dwelling. (E.g. Existing principal dwelling = 2,000 sq. ft. - 40% of 2,000 sq. ft. = 800 sq. ft ADU maximum size).
  - c. Where interior to the principal dwelling, the ADU shall not reduce the principal dwelling GLAAG to less than 1200 sq. ft. (E.g. Before ADU, principal dwelling GLAAG = 2,000 sq. ft. – Interior ADU = 800 sq. ft., leaving a remainder of 1,200 sq. ft. as principal dwelling GLAAG)
9. Access:
  - a. ADUs shall have one interior direct access between the ADU and the principal dwelling unit, and one exterior access.
  - b. If an exterior access requires stairs to a level higher than the entry level of the principal dwelling unit, it shall be at the side or rear of the ADU.
10. Vehicular Access:
  - a. Adequate space shall be provided within the property for ingress, turning around and egress of vehicles.
  - b. Adequate off street parking shall be provided for the combined needs of the principal dwelling unit and the accessory dwelling unit.
11. Health and Safety:
  - a. An accessory dwelling unit shall meet all fire and building safety codes.
  - b. The existing, replacement and/or new septic system shall be certified by a licensed septic designer or engineer as adequate to support the accessory dwelling unit and principal dwelling unit in accordance with New Hampshire regulations.
  - c. Well capacity shall be demonstrated to be sufficient to support the accessory dwelling unit and principal dwelling unit.

**D. Procedural Requirements**

An accessory dwelling unit (ADU) shall be granted a Special Exception by the Board of Adjustment provided the Board of Adjustment finds the submitted complete plan set for the ADU to be in compliance with all requirements specified in Section C of this article.

1. Establishment of an accessory dwelling unit requires:
  - a. A Special Exception for an ADU shall be granted to the owner of record of the principal dwelling unit by the Board of Adjustment before a building permit can be obtained (Appeal period shall expire prior to final approval and granting of Certificate of Occupancy).
  - b. A Building Permit for an ADU shall be approved and issued by the Building Inspector prior to the construction of an accessory dwelling unit.
  - c. A Certificate of Occupancy shall be approved and issued by the Building Inspector. Required inspections of the accessory dwelling unit shall be performed by the Town Building Inspector, Fire Chief, or their designees.
  - d. A License to Rent shall be obtained by the property owner before any tenant can reside in an accessory dwelling unit, or within 12 months of the date the Certificate of Occupancy was granted, whichever comes first.
  - e. The License to Rent requires inspection(s) of the accessory dwelling unit by the Town Building Inspector, Fire Chief, or their designees. If the inspections required to obtain the Certificate of Occupancy have occurred within the previous 90 days, these inspections may be waived.
2. Maintenance of an accessory dwelling unit requires:
  - a. The License to Rent is issued for a period of 3 years. The License must be renewed before expiration, unless the ADU is discontinued. Renewal requires inspections to be performed by the Town Building Inspector and Fire Chief, or their designees.
  - b. If the license is not renewed before its expiration date, a fine shall be levied to the owner of the property, according to the provisions of RSA 676:17-a, Cease and Desist Orders. This fine shall be \$25 per day, commencing 14 days after the license expiration and continuing until the license is renewed or the accessory dwelling unit is discontinued.
3. Discontinuance of an accessory dwelling unit:
  - a. A property owner can notify the Board of Selectmen in writing that he or she wishes to discontinue use of an accessory dwelling unit.
  - b. The accessory dwelling unit shall not be occupied at the time it is discontinued.
  - c. An accessory dwelling unit is deemed to be discontinued when the Board of Selectmen revokes the Certificate of Occupancy and the License to Rent.

4. If the owner of record of the property ceases to reside on the property, a fine shall be levied to the owner of the property, according to the provisions of RSA 676:17-a, Cease and Desist Orders. This fine shall be \$50 per day, commencing 14 days after the owner is no longer a resident and continuing until an owner resides on the property or the accessory dwelling unit is discontinued.
  - a. Owners who are temporarily absent from the property, such as members of the armed forces called to active duty, may apply for relief from this provision to the Board of Selectmen. (Reference: Service-members Civil Relief Act, Public Law 108-189, December 2003.)
5. If a property with an accessory dwelling unit is conveyed to a new owner, the new owner may either:
  - a. Obtain a new License to Rent to continue use of the accessory dwelling unit, following the provisions above, or
  - b. Discontinue the accessory dwelling unit, following the provisions above.
  - c. If a new license is not obtained or the use is not discontinued, a fine shall be levied to the owner of the property, according to the provisions of RSA 676:17-a, Cease and Desist Orders. This fine shall be \$25 per day, commencing 14 days after the property has been conveyed to the new owner and continuing until the license is renewed or the accessory dwelling unit is discontinued.

**E. Enforcement Authority**

The Board of Selectmen and/or their designated code enforcement officer shall be the final authority on compliance and enforcement of this article.

**ARTICLE XXI: MULTI-FAMILY HOUSING OVERLAY DISTRICT ORDINANCE**

Multi-family housing is defined in the New Hampshire RSA 674:58, Workforce Housing Definitions, as five (5) or more dwelling units within a single structure. RSA 674:59 states that a municipality must allow development of multi-family housing at some locations within its borders. The Institute of Transportation Engineers (ITE) Trip Generation, 6th edition, Average Vehicle Trip Ends (one way) per dwelling unit (Low-Rise Apartment/Multi-Family) average about seven (7) trip ends per day. A five (5) unit multi-family dwelling could therefore generate an average of 35 trips per day, either incoming or outgoing.

Consequently, the Multi-Family Housing Overlay District is located along State Highway 31 (NH 31), a state maintained roadway with a good line of sight along the portions within the Town of Mason.

**A. Purpose and Intent**

To provide a reasonable and realistic opportunity for affordable multi-family housing as required by New Hampshire RSA 674:58-61.

**B. Authority**

The Multi-Family Housing Overlay District Ordinance defines an overlay district which imposes additional permitted uses, requirements and restrictions to those of the underlying base district. It is established under the powers granted under NH RSA 674:21, Innovative Land Use Controls.

If any provision of this Ordinance is in conflict with other provisions of the Town of Mason Planning Ordinance or other Town ordinances or regulations, the more restrictive provision shall apply, except for any provision relating to standards for duplex or multiple family dwellings, lot size, frontage, or setbacks, in which case the provisions of this Ordinance shall apply.

**C. Location**

The Multi-Family Housing Overlay District overlays the General Residential, Agricultural, and Forestry (GRAF) District along both sides of NH State Highway 31, and is comprised of lots that meet the following frontage and size requirements:

1. The lot meets the minimum frontage requirement of the underlying zoning district and the minimum frontage used to meet this requirement is located along NH 31.
2. The lot meets the minimum lot size of the underlying zoning district.

Additional lot size requirements may apply as described in Section E.

**D. Permitted Use**

Multi-family residential units are permitted on lots that belong to the Multi-Family Housing Overlay District and meet the requirements of this Ordinance. A multi-family residential unit, for the purpose of this Ordinance, is defined as a single structure containing between two (2) and five (5) residential dwellings.

**E. Requirements for Multi-Family Housing Units**

1. The lot shall belong to the Multi-Family Housing Overlay District.
2. The lot shall contain one acre, exclusive of wetlands, steep slopes (25% or greater) or rock outcroppings, for each planned and existing residential dwelling.
3. A setback of 75 feet from all boundaries of the lot shall be required for any structure existing or to be constructed.
4. More than one multi-family structure may be located on one lot, provided all lot location, size, frontage and setback requirements are met. If multiple multi-family structures are to be located on one lot, the access way to residential structures must be constructed to Class V road standards as prescribed in applicable Town of Mason regulations.
5. The water supply or supplies shall meet all State design and permitting requirements and submitted plans shall carry the seal of a qualified NH licensed engineer/professional.
6. The septic disposal system or systems for the site shall meet all state design and permitting requirements and submitted plans shall carry the seal of a qualified NH licensed engineer/professional.

7. No residential structure shall be greater than 2 stories in height, to protect the safety of residents.
8. All structures must comply with the Town of Mason Building Code.
9. The site design shall take into consideration any natural, historic or cultural resources located on the lot.
10. The site design shall reserve areas for recreation and/or open space preservation for the benefit of the residents.
11. If a Site Layout Design Process has been incorporated into the Town of Mason Subdivision Regulations, the site shall be designed cooperatively with the Town of Mason Planning Board.
12. A site plan review is required.
13. Exterior design shall be compatible with Mason's rural New England village character.

## **ARTICLE XXII: AQUIFER AND WELLHEAD PROTECTION OVERLAY DISTRICT ORDINANCE**

### **A. Authority**

The Town of Mason hereby adopts this Aquifer and Wellhead Protection Overlay District Ordinance pursuant to the authority granted under RSA 674:16 and RSA 674:21.

### **B. Purpose**

The Aquifer and Wellhead Protection (AWP) Overlay District Ordinance is established for the purpose of protecting the quality and quantity of Groundwater resources available to be used as current and/or future drinking water supplies. This Ordinance is intended to:

1. Maintain public health and welfare by protecting existing and potential sources of Groundwater and associated recharge areas.
2. Prevent land use practices and development that could reduce the volume of recharge available to Aquifers identified as current or potential sources of drinking water.
3. Prevent land use practices and development that could contaminate or adversely impair the quality of Groundwater within Aquifers identified as current or potential sources of drinking water.
4. Provide for future growth, in accordance with the Town's Master Plan, by protecting the long-term availability of clean, safe potable water.
5. Identify land uses that can safely be sited in Aquifer recharge areas and in the proximity of water supply wells.

### **C. Definitions**



1. **Animal Feedlot:** A lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. Confined winter shelter areas are not considered feedlots.
2. **Aquifer:** A geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.
3. **Bulk Petroleum Plant or Terminal:** That portion of a 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.
4. **Best Management Practices:** A method or technique that has consistently shown results superior to those achieved with other means, and that is used as a benchmark. In addition, a "best" practice can evolve to become better as improvements are discovered. BMP's derived from public agencies or other sources shall be utilized as guidelines, the Planning Board may approve an alternative method if it is found to achieve a similar result.

The most recent editions of the following publications are considered Best Management Practices:

- a. Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, prepared by the New Hampshire Department of Resources and Economic Development;
  - b. Manual of Best Management Practices for Agriculture in New Hampshire, prepared by the Agricultural Best Management Practices Task Force and the USDA Natural Resources Conservation Service for the New Hampshire Department of Agriculture;
  - c. Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, prepared by the New Hampshire Department of Environmental Services in conjunction with the Rockingham County Conservation District;
  - d. Manual of Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials prepared by the New Hampshire Department of Environmental Services; and
  - e. Rock Blasting and Water Quality Measures That Can Be Taken to Protect Water Quality and Mitigate Impacts, prepared by Brandon Kern, NHDES Drinking Water Source Protection Program.
5. **Community Water System:** A Public Water System having at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. The well serving the Mason Elementary School and the Mann House is designated as a community water facility.

6. **Groundwater:** Subsurface water that occurs beneath the water table in soils and geologic formations.
7. **Gasoline Station:** Means 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.
8. **Hazardous Waste:** Any solid, semisolid, liquid or contained gaseous waste, or any combination of these wastes, which:
  - a. May cause or contribute to an increase in irreversible or incapacitating reversible illness.
  - b. Poses a present or potential threat to human health or the environment if improperly managed.
  - c. Has been identified as a hazardous waste by the New Hampshire Department of Environmental Services Waste Management Division.
9. **Impervious:** Not readily permitting the infiltration of water, including packed gravel surfaces such as parking areas, driveways or traveled ways.
10. **Impervious Surface:** A surface through which Regulated Substances cannot pass when spilled. Impervious Surfaces include concrete unless unsealed cracks or holes are present. Earthen, wooden, or gravel surfaces, or other surfaces which could react with or dissolve when in contact with substances stored on them, are not considered Impervious Surfaces.
11. **Injection Well:** A well where hazardous wastes are injected.
12. **Junkyard:** An 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, as defined in RSA 236:112, as amended. 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.
13. **Outdoor Storage:** Storage of materials not protected from the elements by a roof, walls, and a floor with an Impervious Surface.
14. **Positive Limiting Barrier:** A depression (e.g., groove) in the surface of an otherwise level impervious area designed to impede the flow of and contain spilled substances within the perimeter of the impervious area. These are typically constructed and maintained to contain small spills or releases (five to fifteen gallons).
15. **Regulated Substance:** Any of the following, with the exclusion of ammonia, sodium hypochlorite, sodium hydroxide, acetic acid, sulfuric acid, potassium hydroxide, potassium permanganate, propane or other liquefied fuels which exist as gases at normal atmospheric temperature and pressure:
  - a. Oil as defined in RSA 146-A:2, III;

- b. Any substance that contains a regulated contaminant for which an ambient groundwater quality standard has been established pursuant to RSA 485-C:6; and
  - c. Any substance listed in 40 CFR 302, 7-1-05 edition, as amended.
16. **Sanitary Protective Radius:** The area around a public water supply well which must be maintained in its natural state as required by Env-Dw 301 or 302 (for community water systems); Env-Dw 373.12 and Env-Dw 372.14 (for other Community Water Systems), as amended.
  17. **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 Hydrogeologist, Soil Scientist, Wetlands Scientist, Engineer or other qualified professional approved by the Planning Board.
  18. **Secondary Containment:** A structure such as a berm or dike with an Impervious Surface which is adequate to hold at least 110 percent of the volume of the largest regulated-substance container stored within.
  19. **Snow Dump:** For the purposes of this Ordinance, a location where snow, which is cleared from roadways and/or motor vehicle parking areas situated beyond the Aquifer and Wellhead Protection District, is placed for disposal.
  20. **Stratified-Drift Aquifer:** A geologic formation of predominantly 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.
  21. **Surface Water:** Streams, lakes, ponds and wetlands, including marshes, water-courses and other bodies of water, natural or artificial.
  22. **Wellhead Protection Area:** The surface and subsurface area surrounding a water well or wellfield supplying a Community Water System, through which contaminants are likely to move toward and reach such water well or wellfield.

#### D. Applicability

This Ordinance shall apply to all uses of land situated within the Aquifer and Wellhead Protection Overlay District, except for those uses exempt under Section H of this Ordinance.

#### E. District Boundaries

1. Aquifer and Wellhead Protection (AWP) Overlay District boundaries are as identified on a map on file with the Town Clerk entitled “Aquifer and Wellhead Protection Overlay District Map”.
2. The AWP is an Overlay District which is superimposed over all underlying Districts.
3. Data resources used to produce the map include:

- a. Aquifer areas as delineated on a map prepared by the U.S. Geological Survey entitled: “Saturated Thickness, Transmissivity, and Materials of Stratified-Drift Aquifers in the Middle Merrimack Basin, South-Central New Hampshire”. This map is found in a study entitled: “Geohydrology and Water Quality of Stratified-Drift Aquifers in the Middle Merrimack River Basin, South-Central New Hampshire”, prepared Ayotte, J.D. and Toppin, H.W., 1995: U.S. Geological Survey Water-Resources Investigation Report 92-4192, and as may be amended or superseded by the U.S.G.S.
  - b. Wellhead Protection Areas associated with public water supply wells shown on the AWP District map and New Hampshire Department of Environmental Services.
- 4. Incorrectly Designated Zones. In instances where the actual boundary of the Aquifer and Wellhead Protection Overlay District are disputed, the Planning Board, at the Applicant's expense and authorization, may engage a qualified professional geologist or hydrogeologist to determine the precise location of the AWP District boundaries. A report of the professional's findings shall be submitted to the Planning Board, which shall include but not be limited to the following:
  - a. A revised soils map of the area in question along with a written report of on-site field inspection and test boring data.
- 5. If the information provided to the Planning Board is accepted by the Board, the boundary of the AWP District shall be adjusted based on the evidence provided. The Planning Board may reserve the right to withhold action on any application pending the results of an on-site inspection by the Board or its appointed agent.

**F. Permitted Uses**

All uses permitted in the underlying Zoning District are permitted in the Aquifer and Wellhead Protection Overlay District unless identified as Prohibited Use or Conditional Use under this Ordinance. All uses within the AWP District shall comply with Performance Standards specified in Section K unless specifically exempt under Section H of this Ordinance.

**G. Prohibited Uses**

- 1. The following uses are prohibited in the Aquifer and Wellhead Protection Overlay District:
  - a. Development or operation of a Hazardous Waste Disposal Facility, as defined under RSA 147-A, as amended;
  - b. Development or operation of a Solid Waste Landfill, as defined under RSA 149-M, as amended;
  - c. Outdoor Storage of road salt or other deicing compounds;
  - d. Development or operation of a Junkyard;

- e. Development or operation of a Snow Dump;
- f. Development or operation of a wastewater or septage lagoon;
- g. Subsurface storage of regulated substances, including gasoline, diesel fuel, oil and other refined petroleum products, and the subsurface transmission of regulated substances, including gasoline, diesel fuel, oil, natural gas and other refined petroleum products through pipelines.
- h. Development or operation of Gasoline Stations;
- i. Development or operation of Injection Wells;
- j. Development or operation of an Animal Feedlot;
- k. Development or operation of a dry cleaning facility, using or storing dry cleaning chemicals on site;
- l. Non-municipal wells that may result in an aquifer volume reduction that exceeds the recharge rate.

#### **H. Exempted Uses**

- 1. The following uses shall be exempt from the provisions of this Ordinance provided they remain in compliance with all applicable local, state, and federal requirements:
  - a. Any single family dwelling, including a single family dwelling with an Accessory Dwelling Unit;
  - b. Any business or facility where Regulated Substances are stored in containers having a capacity of not more than five gallons per container;
  - c. Storage of heating fuels for onsite use, or fuels for emergency electric power generation, provided that storage tanks are indoors on a concrete floor or have corrosion control and leak detection, and Secondary Containment accommodations;
  - d. Storage of motor fuel in tanks attached to vehicles fitted with permanent fuel lines to enable the fuel to be used by that vehicle;
  - e. Storage and use of office supplies;
  - f. Temporary storage of construction materials on a site where they are intended to be used;
  - g. The transportation and storage of pesticides, as defined in RSA 430:29 XXVI, as amended;
  - h. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Wm 401.03(b)(1) and 501.01(b);

- i. Agricultural uses as defined under RSA 21:34-a, as amended, provided such uses do not meet the criteria of an Animal Feedlot operation.

**I. Conditional Uses**

1. Any use not Prohibited under Section G, but which will require one or more of the following conditions, shall only be permitted by a conditional use permit issued by the planning board in accordance with the following sections. A conditional use permit under this section shall be required for any of the following:
  - a. Storage, handling, and use of Regulated Substances in quantities exceeding 55 gallons or 660 pounds dry weight at any one time, provided an adequate Spill Prevention Control and Countermeasure (SPCC) Plan, prepared in accordance with Section J of this Ordinance, and is approved by the Fire Department;
  - b. Any activities that involve blasting of bedrock;
  - c. Truck and automotive repair facilities; or
  - d. Expansion of existing non-conforming uses or structures shall be allowed when demonstrated that the expansion will result in a more conforming site or use with greater protection for groundwater resources.
2. In granting such approval the Planning Board shall find such use or uses will remain in compliance with the Performance Standards in Section K of this Ordinance as well as all applicable local, state and federal requirements. The Planning Board may, at its discretion, require a performance guarantee or bond in an amount and form acceptable to the Board, be posted to insure compliance with terms and conditions of the Conditional Use Permit.

**J. Conditional Use Permit Application Procedures**

1. Application for a Conditional Use Permit shall be made on forms supplied by the Planning Board and shall include a narrative and/or site plan containing the following information on one or more pages at a scale suitable to illustrate relevant details of the project, as well as a report demonstrating compliance with applicable requirements of Section I of this Ordinance. As a minimum, each application shall depict or identify:
  - a. North arrow and date of site plan preparation;
  - b. Property boundaries and total parcel area;
  - c. Location of Aquifer and Wellhead Protection Overlay District boundaries;
  - d. Names and addresses of applicant, owners, abutters and holders of conservation restrictions and easements on abutting properties;
  - e. Location of Wetland Conservation District boundaries;
  - f. Soil mapping units;

- g. Topographic contours at intervals not more than 2 feet;
  - h. Existing and proposed development, including removal of vegetation and alteration of terrain;
  - i. Stormwater management accommodations, both existing and proposed. The applicant shall demonstrate:
    - 1) Post development peak stormwater discharge volumes exiting the site are less than or equal to predevelopment discharge volumes for the 10-year return frequency design storm;
    - 2) Volume of site generated stormwater to be infiltrated on site under post-development conditions is greater than or equal to the volume infiltrated under the predevelopment condition based on evaluation of the 2 year return frequency design storm;
    - 3) Stormwater management facilities shall provide for the removal of sediment;
  - j. Identification of potential risks to the District anticipated as a result of proposed site development together with proposals for mitigation;
  - k. Identification of hazardous materials to be stored or used on site together with a plan for proper management of the same;
  - l. If required by the Planning Board, provisions for monitoring of Groundwater and/or Surface Water quality.
2. Proposals for Conditional Uses, which involve Regulated Substances, shall also be required to submit a Spill Prevention Control and Countermeasure (SPCC) Plan to the Fire Department for review and approval. A SPCC Plan shall include:
- a. A description of the physical layout and a facility diagram, including all surrounding Surface Waters, Wellhead Protection Areas and all water supply facilities on the property or within 100 feet of the property boundaries;
  - b. A contact list with telephone numbers (including cell phone) and email addresses of the facility response coordinator, cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted upon release to the environment;
  - c. A list of all Regulated Substances to be stored on the premise;
  - d. A description of containment and/or diversionary structures or equipment to prevent Regulated Substances from infiltrating into the ground.
3. The Planning Board shall: Consider all relevant facts and information prior to making a decision on any application for a Conditional Use Permit; find the proposal is consistent with the stated Purpose of this Ordinance; and find that to the extent possible, the project avoids and minimizes impacts to land situated within the District, including but not limited to the following:

- a. The proposed activity minimizes degradation of land situated within the District.
  - b. The proposed activity will have no significant negative environmental impact to abutting or downstream properties and/or hydrologically connected water resources.
  - c. The proposed activity incorporates the use of those Best Management Practices recommended by the New Hampshire Department of Environmental Services and/or other State Agencies having jurisdiction.
  - d. All applicable Federal and/or State Permit(s) have been received for the proposed activity in accordance with New Hampshire Code of Administrative Rules – Part Env-Wt 100-800 and Section 404 of the Federal Clean Water Act, as amended.
  - e. Prior to making a decision in regard to the possible approval of any Conditional Use Permit application, the Planning Board shall afford the Conservation Commission an opportunity to review and comment on the application. The Conservation Commission, after consideration and review of an application for a Conditional Use Permit, may recommend the Planning Board impose conditions of approval, if deemed necessary, to mitigate the potential for adverse effects caused by the proposed activity or use.
4. All costs associated with the Conditional Use Permit application and review will be at the Applicant's expense.

**K. Performance Standards**

The following Performance Standards shall apply to all uses of land in the Aquifer and Wellhead Protection Overlay District unless such use or uses enjoy an exemption under Section H of this Ordinance:

1. For any use that will render more than 15 percent of the total parcel area Impervious, a stormwater management plan consistent with New Hampshire Stormwater Manual Volumes 1-3, December 2008, as amended; published by NH Department of Environmental Services, shall be prepared and submitted to the Planning Board.
2. Conditional uses, as defined under Section I, shall develop stormwater management and pollution prevention plans and include information consistent with *Developing Your Stormwater Pollution Prevention Plan: A Guide for Industrial Operators* (US EPA, Feb 2009, as amended). The plan shall:
  - a. Meet minimum stormwater discharge setbacks between water supply wells and constructed stormwater practices as found within the *Innovative Land Use Planning Techniques: A Handbook for Sustainable Development*, Section 2.1 Permanent (Post-Construction) Stormwater Management, (NHDES 2008, as amended);
  - b. Minimize, through a source control plan that identifies pollution prevention measures, the release of Regulated Substances into stormwater;



- c. Stipulate that expansion or redevelopment activities shall require an amended stormwater plan and may not infiltrate stormwater through areas containing contaminated soils without completing a Phase I Environmental Site Assessment in conformance with ASTM E 1527-05; and
  - d. Maintain a vertical separation of not less than four feet between the bottom of a stormwater management facility which infiltrates or filters and the seasonal high water table elevation as determined by a Licensed Hydrogeologist, Soil Scientist, Engineer or other qualified professional as determined by the Planning Board.
- 3. The proposed use, either alone or on a cumulative basis, will not cause a significant reduction in the long-term volume of water contained in the underlying aquifer or in the storage capacity of the aquifer.
- 4. Animal manures, fertilizers, 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, June 2011 or as updated;
- 5. All Regulated Substances stored in containers with a capacity of more than five gallons must be stored in product-tight containers on an Impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and the out-of-doors;
- 6. Facilities where Regulated Substances are stored must be secured against unauthorized entry by means of a door and/or gate that is locked when authorized personnel are not present and must be inspected weekly by the facility owner;
- 7. Outdoor Storage areas for Regulated Substances, associated material or waste must be protected from exposure to precipitation and must be located at least 50 feet from Surface Water or storm drains; and outside of protective radii of wells;
- 8. Secondary Containment must be provided for Outdoor Storage of Regulated Substances in regulated containers and the containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s);
- 9. Containers in which Regulated Substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another;
- 10. Prior to any land clearing or alteration of terrain, any inactive wells on the property shall be identified and must be decommissioned in accordance with Part We 604 Abandonment of Wells of the New Hampshire Water Well Board Rules, as amended. Proposed site activity shall not impact the integrity of any well located on the property.
- 11. Blasting activities shall be planned and conducted in a manner consistent with best management practices published by the NHDES to minimize Groundwater contamination.
- 12. All transfers of petroleum products 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.

13. At the option of the Planning Board, monitoring wells may be established for all industrial and commercial uses utilizing or storing hazardous or toxic materials. The number and location of monitoring wells shall be determined by the Planning Board. The required frequency and protocol for sampling and testing of Groundwater shall be specified by the Planning Board.
14. Storage of pesticides, herbicides, fertilizers, manure, and other potentially dangerous leachable substances shall be setback from water supply wells in accordance with state regulations including Chapter PES 500, managed in accordance with NH Best Management Practices for Agriculture, and controlled in a manner determined by the Planning Board. Appropriate and applicable Best Practices shall be implemented as recommended by the New Hampshire Department of Environmental Services.
15. When an industrial or commercial use within the AWP District changes to one which involves the use, storage, or disposal of hazardous or toxic materials (Regulated Substances), a Site Plan Review shall be required.
16. Not more than 35% of the total area of any lot or parcel shall be rendered Impervious.
17. Sodium chloride salt stored and used for deicing activities shall be properly managed and applied in accordance with accepted best management practices as published by NHDES to minimize impacts to groundwater and reduce the amount necessary for public safety. Alternatives such as calcium magnesium acetate (CMA) and/or potassium acetate (KA) are encouraged.
18. Floor drains are prohibited unless drain is directed to a dry well used to temporarily store fluids until such time they are legally removed.
19. An impermeable barrier membrane (minimum 20 mil) shall be installed beneath slab floors to prevent the infiltration of any spilled liquids within the building from percolating into the ground. The Planning Board has the discretion to impose any other requirements as necessary to achieve the stated purpose.

**L. Existing Nonconforming Uses**

Existing nonconforming uses may continue to operate without complying with the terms of this Ordinance provided that any expansion of said use shall require that a Conditional Use Permit be obtained as provided for herein. Existing non-conforming uses must be in compliance with all applicable state and federal requirements, including Env-Wq 401, Best Management Practices Rules.

**M. Administration and Enforcement**

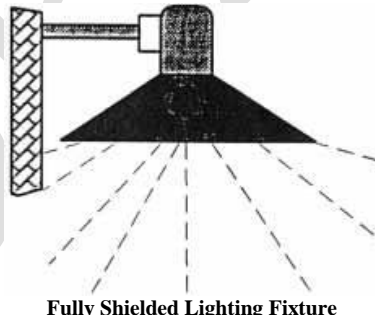
See Article VII, Section E, “Enforcement”.

**ARTICLE XXIII: OUTDOOR LIGHTING ORDINANCE****A. Purpose**

The purpose of this ordinance is to enhance public safety and welfare by providing for adequate and appropriate outdoor lighting, while preserving the natural dark skies that are an important aspect of the rural character of the Town of Mason. This ordinance recognizes the importance of lighting for safety and security while encouraging energy efficiency and reduction of light pollution and glare.

**B. Definitions**

1. **Luminaire:** A lighting fixture that includes a lamp or lamps.
2. **Lamp:** The component of a luminaire that produces light.
3. **Glare:** Light emitted by a lamp in direct line-of-sight contact with the viewer.
4. **Light trespass:** Light that is produced by a luminaire beyond the property line on which it is located.
5. **Sky glow:** Light from a luminaire that is emitted above the horizontal plane that passes through the lowest part of the luminaire.
6. **Fully-shielded lighting:** Lighting in which the light rays emitted by the fixture are projected no higher than the horizontal plane that passes through the lowest part of the luminaire.



**Fully Shielded Lighting Fixture**

**C. Requirements**

1. Applicability

All Commercial and Industrial outdoor lighting installed in the Town of Mason shall comply with the requirements specified below. Private residential lighting is encouraged to comply with these specifications.

2. General Lighting Restrictions

- a. All luminaires shall be fully shielded and not cause sky glow.
- b. No luminaire shall emit glare beyond a property line or be positioned such that it impedes the vision or line of sight of drivers in or on public ways.
- c. Lighting shall be turned off after business hours except for lighting necessary for security or safety. It is recommended that motion detectors be used with security lighting.
- d. It is recommended that total illumination be the lowest intensity possible for the intended use.

3. Gas Station-Type Canopies

- a. Luminaires mounted on a canopy shall be recessed in the ceiling of the canopy so that the lens cover is recessed or mounted flush with the ceiling of the canopy and fully shielded. Luminaires shall not be mounted on the sides or top of the canopy, and the sides or fascias of the canopy shall not be illuminated.

4. Lighted Advertising Signs

- a. Signs may be illuminated only by externally mounted white light sources.
- b. Bottom-mounted lighting is prohibited.
- c. Moving, blinking, or flashing lights or signs and electronic message signs are prohibited.
- d. The outdoor operation of searchlights, lasers, or other high-intensity beams for advertising purposes is prohibited.

5. Pre-existing Outdoor Lighting

- a. Any luminaire that replaces a non-conforming, pre-existing luminaire, or any luminaire that is moved, shall meet the standards of this Ordinance.

**D. Exceptions**

The following are exempt from this Ordinance:

- a. Temporary luminaires required for construction projects.
- b. Luminaires related to police, fire, or other emergency services.
- c. Luminaires used for signal illumination to ensure roadway safety.
- d. Hazard warning luminaries required by federal regulatory agencies.
- e. Low-intensity temporary seasonal lighting.

- f. Lighting used to illuminate the American flag or the New Hampshire state flag at night is exempt from requirements specified in Section C.2.

### E. Enforcement Authority

See Article VII, Section E, “Enforcement”.

## Appendix A: Examples



## **APPENDIX A: NH MODEL FLOODPLAIN DEVELOPMENT ORDINANCE**

### **New Hampshire Model Floodplain Development Ordinance For Communities with Special Flood Hazard Areas**

Meets the Minimum Requirements of Section 60.3(b) of the National Flood Insurance  
Program Regulations

Written by the Federal Emergency Management Agency (FEMA)

This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the ***Town of Mason Floodplain Development Ordinance***. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Mason Planning (Zoning) Ordinance, and shall be considered part of the Planning (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 Planning (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 Hillsborough, NH" dated September 25, 2009 or as amended, together with the associated Flood Insurance Rate Maps (FIRM) dated September 25, 2009 or as amended, which are declared to be a part of this ordinance and are hereby incorporated by reference.

#### **Item I Definition of Terms:**

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

***"Area of Special Flood Hazard"*** is the land in the floodplain within the Town of Mason subject to a one-percent or greater possibility of flooding in any given year. The area designated as Zone(s) A on the Flood Insurance Rate Map (FIRM).

***"Base Flood"*** means the flood having a one-percent possibility of being equaled or exceeded in any given year.

***"Basement"*** means any area of a building having its floor subgrade on all sides.

***"Building"*** - see "structure".

***"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, excavation, drilling operation, or storage of equipment or materials.

"**FEMA**" means the Federal Emergency Management Agency.

"**Flood**" or "**Flooding**" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters.
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"**Flood Insurance Study**" means an examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood related erosion hazards.

"**Flood Insurance Rate Map**" (FIRM) means an official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Mason.

"**Floodplain**" or "**Flood-prone area**" means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

"**Flood proofing**" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

"**Floodway**" - see "Regulatory Floodway".

"**Functionally dependent use**" means a use which 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.

"**Highest adjacent grade**" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"**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:

- (1) By an approved state program as determined by the Secretary of the Interior, or
- (2) Directly by the Secretary of the Interior in states without approved programs.

**"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.

**"Manufactured Home"** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days. This includes manufactured homes located in a manufactured home park or subdivision.

**"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.

**"Mean sea level"** means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a communities Flood Insurance Rate Map are referenced.

**"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 improvements.

**"100-year flood"** - see "base flood"

**"Recreational vehicle"** means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measure at the largest horizontal projection; (c) designed to be self-propelled or permanently towable 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.

**"Regulatory floodway"** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. These areas are designated as floodways on the Flood Boundary and Floodway Map.

**"Special flood hazard area"** (See - "Area of Special Flood Hazard")



**"Structure"** means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**"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 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.

**"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.

**"Substantial Improvement"** means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should equal: (1) the appraised value prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which 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".

**"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 44 Code of Federal Regulations (CFR) §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.

**"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.

**Item II.**

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

**Item III.**

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:

- (i) 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,
- (ii) be constructed with materials resistant to flood damage,
- (iii) be constructed by methods and practices that minimize flood damages,
- (iv) 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.

**Item IV.**

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.

**Item V.**

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 floodproofed, the as-built elevation (in relation to NGVD) to which the structure was floodproofed.
- (c) any certification of floodproofing.

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

**Item VI.**

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.

**Item VII.**

1. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Board 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 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."

**Item VIII.**

1. 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 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 floodproofed so that below the 100 year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

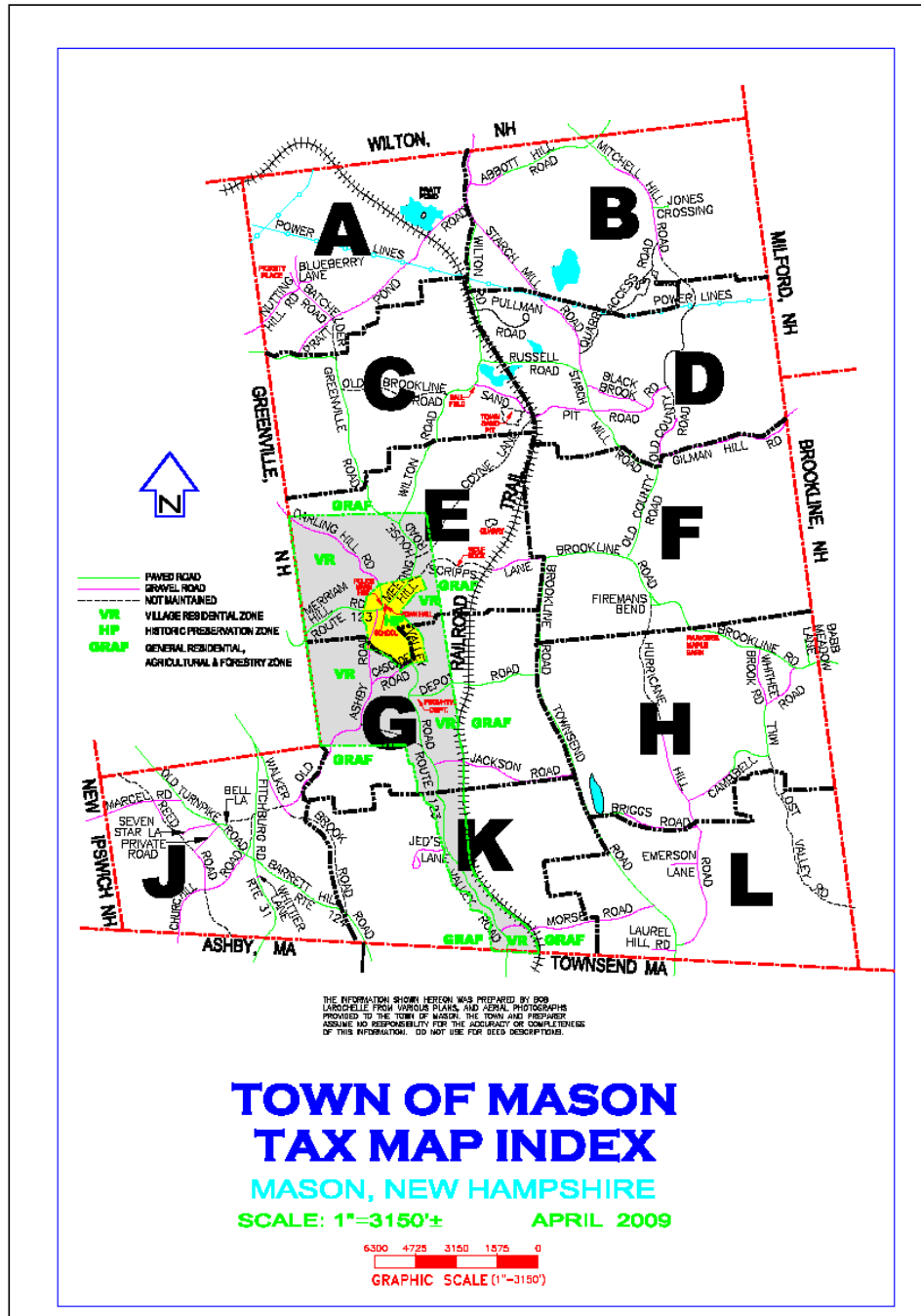
- (ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
  - (iii) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting 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 home is 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. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;
- d. recreational vehicles placed on sites within zone A shall either (i) be on the site for fewer than 120 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: (1) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage; (2) the area is not a basement; (3) 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.

**Item IX 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 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:
  - (a) that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.

- (b) that 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) that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 3. The Zoning Board of Adjustment shall notify the applicant in writing that: (i) 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 (ii) 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.
- 4. The community shall (i) maintain a record of all variance actions, including their justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

## MAP OF MASON ZONING DISTRICTS AND TAX MAPS



## **FEMA FLOOD HAZARD BOUNDARY MAPS**

**Article XVIII, Floodplain Development Ordinance  
Appendix A: NH Model Floodplain Development Ordinance  
Hillsborough County FIS and FIRM updates effective September 25, 2009  
Adopted by Resolution on August 25, 2009, in accordance with RSA 674:57**

See Selectmen's Office for maps.

DRAFT