

Planning Lunches at Noon (PLAN) Monthly Webinar Series

Welcome to the PLAN Monthly Webinar Series!

“IT’S ZONING AMENDMENT TIME....AGAIN!”

The webinar will begin shortly.

Check out our Planning and Zoning Training website page for:

- Slides and recording of all completed webinars in the PLAN series
- Schedule for upcoming webinars
- A short, anonymous online survey to gather feedback and topics for future webinars

www.nh.gov/osi/planning/planning-training.htm

Webinar Logistics

Presentation then Question and Answer session

- ▶ Type questions into Chat box
- ▶ Raise hand

- ▶ We will be **recording** this webinar.



It's Zoning Amendment TimeAgain!

Agenda

Why and how do we have zoning?

Zoning Ordinance relationship to other municipal regulations

What is a zoning amendment?

What to consider for Zoning Amendments

Best Practices?

Legislative Body Process

Notification requirements

Ballot Requirements

What's new in '22

Q&A

Why do we have Zoning?

In 1916, New York City adopted the first zoning regulations to apply citywide as a reaction to construction of the Equitable Building (which still stands at 120 Broadway).



How did NH get it?

Legislature enacts “*Title LXIV Planning and Zoning RSA Chapters 672-679*”

- Most recent- RSA 679 Housing Appeals Board enacted in 2019

NH RSA 674:16. Zoning Grant of Power-

- “For the purposes of promoting the health safety, or general welfare of the community....

NH RSA 674:17. Purposes of Zoning Ordinances-

- “Lessen congestion in the streets, provide adequate light and air, prevent overcrowding of land, assure proper use of natural resources and other public requirements...{RSA 674:17 (a-j)}

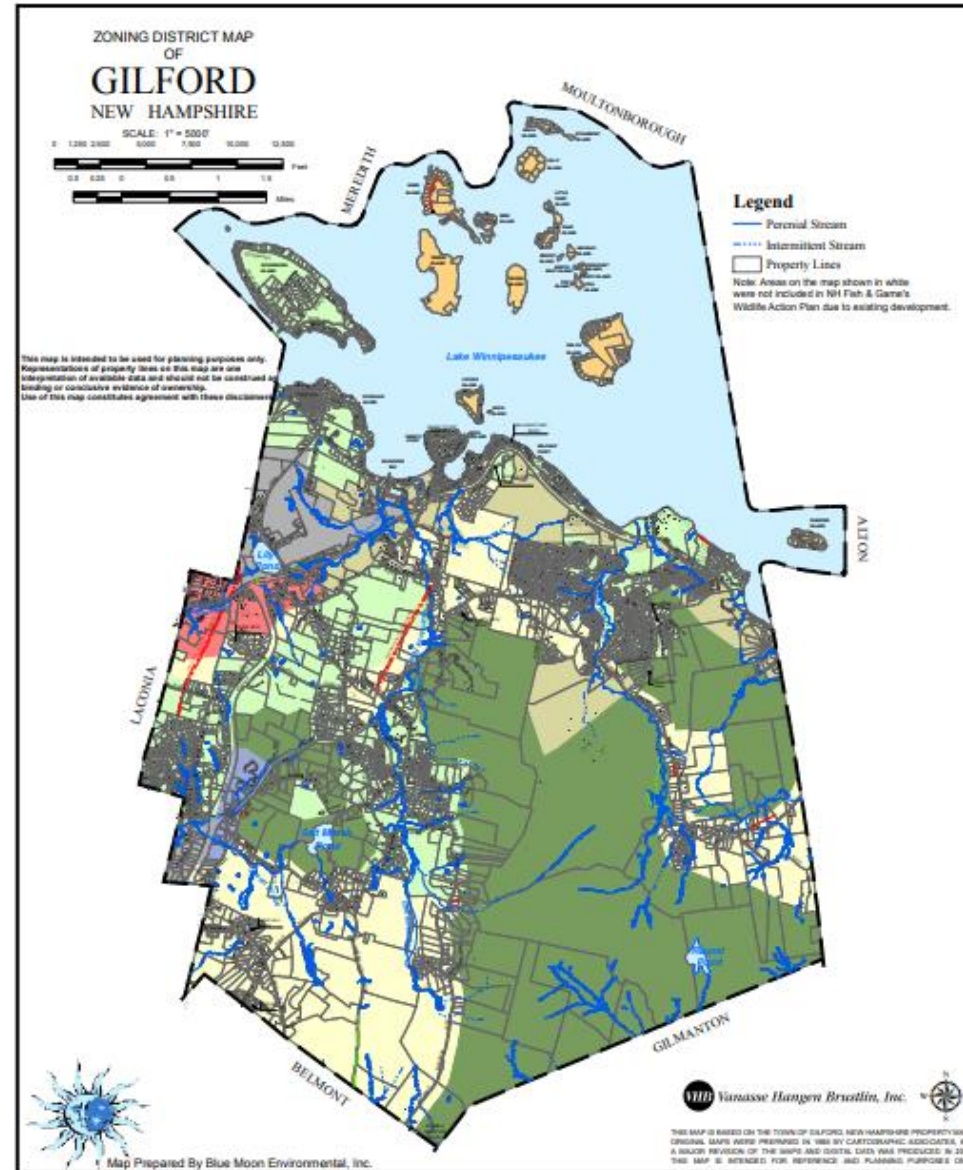
What is Zoning?

1) Zoning Ordinance- Municipality decides on whether to adopt zoning to regulate the land uses in their community through-

RSA 674:16, 674:17, and RSA 674:18

RSA 674:20 Districts “...in order to carry out and accomplish the purposes of zoning, the local legislative body may divide the municipality into districts....”

2) Zoning Map- The map that geographically shows all zoning district boundaries and classifications as identified and described in the zoning ordinance.



Zoning's Relationship to the Master Plan

Master Plan is the legal building block for land use regulations!

- Establish a Planning Board and adopt By-Laws (673:1),
- RSA 674:18 “The local legislative body may adopt a zoning ordinance under RSA 674:16 only after the planning board has adopted the mandatory sections of the master plan as described in 674:2 I. and II.”
- RSA 674:2.I- “The purpose of the master plan is to set down as clearly and practically as possible the best and most appropriate future development of the area under the jurisdiction of the planning board...”
- 674:2.II-Legal standing for implementation of land use ordinances.
- Master Plan is community based.
- Two required Master Plan chapters- Vision and Land Use.

Zoning's Relationship to Land Use Regulations

- Legislative body gives authorization for planning board to review and approve subdivision applications therefore, the planning board is authorized to prepare and adopt Subdivision Regulations(674:35)
- Legislative body gives authorization for planning board to prepare and adopt a Zoning Ordinance (674:16)
- Legislative body gives authorization for planning board to review and approve site plan applications therefore, the planning board is authorized to prepare and adopt Site Plan Regulations (674:43)
- Excavation Regulations, Driveway, and Floodplain Regulations.

What is a Zoning Amendment?

A Zoning Amendment- any change to the zoning ordinance including language, table, graphics, or maps, approved by the legislative body.

What to consider for amendments?

- Review sections that have resulted in multiple variances or special exceptions – coordinate with ZBA/CEO.
- Talk with other municipal boards and staff
- Review Table of Permitted Uses and Definitions. (APA, Dictionary)
- Review other land use regulations against the zoning ordinance.
- State regulatory changes “As amended” (CSPA, Wetlands, Excavation, etc.)

Practice Pointer-utilize a “Housekeeping Clause”

The Planning Board has the authority to assign and modify numbering and sections to the Zoning Ordinance provided that no substantive change to the ordinance shall occur as a result of the changes

What is a Zoning Amendment Cont'd

The planning board (RSA 674:1, V)

The governing body (RSA 675:3, VIII)

- The board of selectmen, village district commission, city or town council all have the authority to propose zoning amendments

Petitioned Zoning Amendment (RSA 675:4)

- 25 or more registered voters

Zoning amendment language

- Correct format!
- PB support or not
- Reason or justification statement along with the amend
- Gov Body and Petitioned amendment language cannot be changed!

Represent the proposed amendment at public hearing & voting day

Petitioned Zoning Amendments

- 25 voters can petition to amend or repeal a provision of the zoning ordinance
- Petitions are submitted to the select board or village district commissioners who timely forward to planning board
- At first planning board meeting after the petition period the board shall set the date for the public hearing on the petition
- Petitioned amendments cannot be altered by planning board, but the board shall state if it approves or disapproves on the ballot question

Best Practices

- Start EARLY in the process-in the summer
- Consider adding Work Sessions to monthly meetings
- Keep a running list of potential amendments all year
- Keep good records of notices and minutes
- Don't propose an amendment that will conflict with other sections of the ZO, the Master Plan, or other land use regulations
- Don't take on too many amendments
- Take advantage of RSA 676:12.
 - The building inspector shall not issue any building permit within the 120 days prior to the annual or special town or village district meeting if
 - (a)Application for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7 and..”

Best Practices Cont'd

**DON'T FORGET
THE TOWN
ATTORNEY!**

Do not publish or finalize proposed zoning amendments without involving the town attorney

Legislative Body Process

- In towns a zoning ordinance may be adopted or amended by ballot vote of a majority of the voters present and voting at an annual or special town meeting
 - Towns get one bite at the apple-Once a year!
- In cities and town council towns, the municipal charter determines how a zoning ordinance is to be adopted or revised, although a public hearing on any amendment must be held before adoption
 - Any time of the year
- Petitioned zoning amendments may only be voted on at the annual town or district meeting
- The planning board must hold at least one public hearing according to RSA 675:7 and a second public hearing as needed.

Public Hearing Requirements (675:7)

- 10 calendar day notice (excluding day of posting and hearing) before public hearing shall be posted in 2 public places in municipality
- Notice also published in newspaper in general circulation in municipality, or, in the alternative posted on home page of town's website
- Any person owning property in town can request notice of all public hearings of zoning amendments, and such notice must be provided electronically or by 1st class mail at no cost to recipient
- Full text of the amendment not required provided the notice adequately describes the amendment and states a place where the full text is on file for public inspection.

Notification & Mailing Requirements

- Does amendment change boundary of zoning district that affects 100 or fewer properties? If yes, notice of the public hearing must be mailed to the owners of each affected property
- Does amendment change minimum lot sizes or permitted uses in a zoning district that has 100 or fewer properties? If yes, notice must be sent to the owner of each property in the district
- Notice must be sent by 1st Class mail to address used for property tax bills
- In the case of petitioned zoning amendments, the petitioner must pay for the cost of notice required under RSA 675:7, I-a

Official Ballot Requirements (675:3)

- The municipal clerk, with assistance from the planning board or staff, prepares the question for the official ballot:

“Are you in favor of the adoption of the amendment to the town zoning ordinance as proposed by the planning board as follows: (insert topical description)?”

The Planning Board supports this amendment 6-0 OR

The Planning Board recommends this amendment

- An official copy of the final proposal to amend the zoning ordinance shall be placed on file and made available to the public at municipal clerk's office no later than the fifth Tuesday prior to the date when action is to be taken.

**Remember-
Zoning amendments cannot be amended after
the final public hearing.**

What's new in '22? HB 1661

Changes to Planning and Zoning Laws in 2022

HB 1661

Section 70 (**eff. August 23, 2022**) Requires OPD to develop specific, optional training methods for PB and ZBA members. Including optional tests.

[Planning Board Handbook & Test page](#)

[Zoning Board Handbook & Test page](#)

Section 71 (**eff. August 23, 2022**) Requires any fee a city or town imposes on an applicant shall be published in a location accessible to the public during normal business hours or the fee shall be waived.

***Section 72 (**eff. July 1, 2023**) Municipalities that offer increased density, reduced lot size, expedited approval, or other dimensional incentives to housing for older persons have a one-year period to make any adjustments to those incentives before they automatically apply to developments of workforce housing.

What's new in '22? HB 1661 Cont'd

Section 73 (**eff. August 23, 2022**)-Requires all land use boards (RSA 672:7) to provide specific written findings of fact that support an approval or disapproval.

Findings of Fact should NOT replace Conditions of Approval.

Section 74 (**eff. August 23, 2022**) ZBAs have 90 days to begin consideration and to approve or disapprove of an application, unless applicant agrees to an extension.

****Section 75 (**eff. January 1, 2023**) PB still have 30 days to determine whether an application is complete BUT clarifies 65-day statutory timeline for acting on a completed application. IF the PB does not act on the application within the 65-day time frame than the governing body is required to approve the application. DRI time frame should be interpreted as 95 days for the PB to act.

What's new in '22? HB 1661 Cont'd

Section 76 (**eff. August 23, 2022**) Eliminates the ability of PB to request an extension from the governing body to take final action on an application.

Section 77 (**eff. August 23, 2022**) Superior Court require a bond from the appealing party whenever an appeal is filed and allows court to award attorney's fees and court costs. BUT fees and costs are not allowed against the party appealing the decision unless board or person acted with negligence, bad faith, or malice either filing the appeal or making the decision.

Section 78 (**eff. August 23, 2022**) TIF RSA 162-K now allows anyone including a municipality to acquire real property for constructing housing that meet definition of workforce housing. (Not Eminent Domain)

Section 79 (**eff. August 23, 2022**) Residential development to occur in TIFs to increase the housing stock.

What's new in '22? HB 1661 Cont'd

Practice Pointers

1. Land Use Fees-Create, update, and post them for the public.
2. Review your incentives for Elderly Housing to apply for Workforce Housing.
JULY 1, 2023
3. ZBA and PB review their Rules of Procedure
4. Planning Board timelines **January 1, 2023**
5. Review existing TIF Districts and Boundaries

Resources

OPD and NHMA websites for Zoning Amendment Calendars and resource information

American Planning Association (APA) website

Northern New England Chapter of the American Planning Association

New Hampshire Association of Regional Planning Commissions

Webster's Dictionary

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**Our next PLAN Webinar from 12 Noon-1:00 PM on November 10, 2022, for
“Resilient Land Use Guide for NH”**

Jenn Rowden from the Rockingham Planning Commission (RPC) will be providing an overview of the Resilient Land Use Guide for NH

Questions and Answer Section

- If you would like to ask a question, please either raise your hand and unmute yourself or type your question in the Chat box. If on the phone, lines have been unmuted

