

Planning Lunches at Noon (PLAN) Monthly Webinar Series

Welcome to the PLAN Monthly Webinar Series!

“IT’S ZONING AMENDMENT TIME....AGAIN! (2023)”

The webinar will begin shortly.

Check out our Planning and Zoning Training website page for:

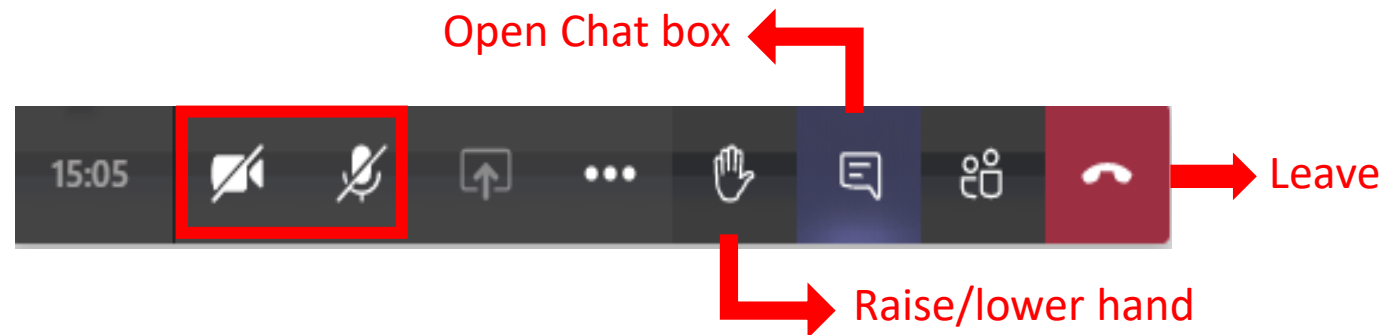
- Slides and recording of all completed PLAN webinars in the
- Schedule for upcoming webinars
- OPD Planning Board and Zoning Board Handbooks & Optional Tests and Certificates
- A short, anonymous online survey

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! (2023)

Agenda

Basic Zoning

What is a zoning amendment?

What to consider for Zoning Amendments?

Legislative Body Process

Building and Fire Code Adoption and Amendment

Notification requirements

Ballot Requirements

Best Practices

Q&A

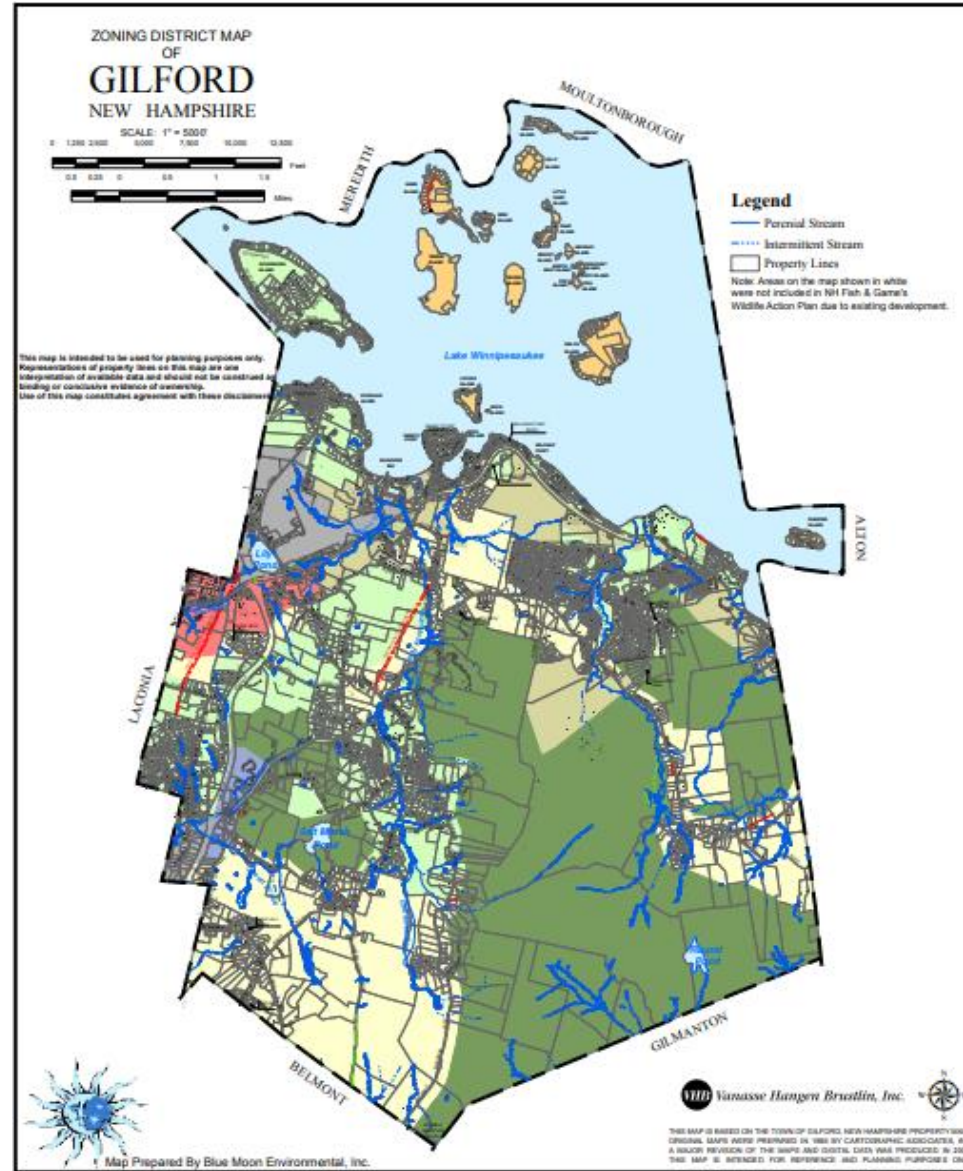
What is Zoning?

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

RSA 674:16 Grant of Power; 674:17 Purposes of Zoning Ordinances; and RSA 674:18 Adoption of Zoning Ordinance

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 Land Use Regulations

- Municipality authorizes creation of planning board through the legislative body. Planning Board adopts by-laws and Master Plan.
- 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)
 - Can't have site plan regulations without zoning
- Excavation Regulations, Driveway, and Floodplain Regulations.
- Hold public hearings for Historic Regulations and Building and Fire Codes

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. (Town Meeting, Town Council, City Council).

RSA 675:6 Method of Adoption-”Every local master plan, subdivision regulation, site plan review regulation and historic district regulation...shall be adopted or amended by the planning board or historic district commission.

Also includes any adoption or amendments to the Building and Fire Codes.

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 may petition for an amendment to a zoning ordinance, historic district ordinance, or a building code.

Zoning amendment language

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

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, Webster’s 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

Consult with Town Attorney

Petitioned Zoning Amendments

- 25 registered voters can petition to amend or repeal a provision of the zoning ordinance, historic and building codes.
- Petitioned zoning amendments must be received between 120 and 90 days before town meeting (the 2nd Tuesday in March, April or May)
- Petitions are submitted to the governing body who 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/supports or disapproves/not support on the ballot

State Building Code

- RSA 155-A:1, IV:
 - ICC 2018 – Building, Existing Building, Plumbing, Mechanical, Energy, Residential Codes
 - NFPA 2020 Electrical Code (except arc-fault circuit requirements past 2014)
 - Local authority to adopt other codes that aren't less stringent (such as International Property Maintenance Code).
- Universal Compliance:
 - All new buildings must comply
 - All buildings that are renovated, altered or repaired must comply
 - Permits are necessary – RSA 155-A:4; RSA 676:11
 - **HOWEVER:** if municipality hasn't specifically adopted enforcement, State Building Code is enforced by State Fire Marshal

Local Enforcement of and Addition to State Building Code

- Minimum Required Content: RSA 674:51, III and IV:
 - Date of first enactment and amendment
 - Establish building code board of appeals (RSA 673:1, V; RSA 673:3, IV)
 - Must have building inspector position
 - Fee schedule/authorize governing body to establish fees
 - Certificate of Occupancy requirement

NEW – Required State Review

- As of 1/1/2023, RSA 155-A:10, IV:
- Proposed municipal amendments to State building code must be submitted to State Building Code Review Board to confirm they aren't in conflict with, or less stringent than, State code
- Cities: at least 90 days before planned vote to adopt;
Towns: within 10 days after final public hearing
- Response within 90 days for cities, 45 days for town
- No response = approved.

NEW – Required State Review

- After vote to adopt: RSA 155-A:10, IV
 - Within 30 days after municipal vote to adopt, file documentation with State Building Code Review Board that public hearing was properly noticed and held, proposal was approved by legislative body vote.
 - May not enforce unless and until such documentation is filed. RSA 674:51, II.

State Fire Code

- RSA 153:1, IV-a:
 - Life Safety Code, NFPA 101, 2018
 - Uniform Fire Code, NFPA 1, 2018
 - NH Admin Code Saf-C 6000
- Applies to new construction and renovation.
- Applies to existing buildings, even if not in renovation.
NH Admin Code Saf-C 6008.01.

State Fire Code: Enforcement

- RSA 153:5, V; RSA 155-A;7, I:
 - Local Fire Chief enforces
 - RSA 154:2, Fire Chief may inspect buildings for fire prevention purposes
 - Fire Chief may adopt fire prevention bylaws in addition, RSA 154:18.

NEW – Required State Review

As of 1/1/2023 RSA 153:4-a, II:

- Local amendments to State Fire Code must be submitted to State Fire Marshal to confirm they are not in conflict with and aren't less stringent than State code, and that they are based on sound engineering practices.
- Statute is vague on the procedures, rules, etc.

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 to change zoning!
- In cities and town council towns, the municipal charter determines how a zoning ordinance is to be adopted or amended, although a public hearing on any amendment must be held before adoption
 - Any time of the year
- The planning board must hold at least one public hearing according to RSA 675:7-
 - Pay attention to the Zoning Amendment calendars to make sure you have enough time to hold additional public hearings if necessary

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 mailed to the owner of each property in the district
- Notice must be sent by 1st Class mail to the 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 of amendment)?”

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.**

Best Practices

- Start EARLY in the process-in the summer and consider adding Work Sessions to monthly meetings (Amend ROP)
- Keep a running list of potential amendments all year-
- A lot of Variances? SE? Look at that section
- Talk with town staff (CEO/ZO) and other municipal boards and commissions.
- Keep language easy to understand. Don't use legal-ese
- Represent the proposed amendment at public hearing & voting day-advertise!
- Keep good records of notices and minutes-Keep an annual ZA file

Best Practices Cont'd

- Don't propose an amendment that will conflict with other sections of the ZO or other land use regs
- 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

b) The proposed changes in the building code or the zoning ordinance would, if adopted, justify refusal of such permit.

Best Practices Cont'd

DON'T FORGET THE TOWN ATTORNEY!

- Do not wait until the last minute or last public hearing
- Do not publish or finalize proposed zoning amendments without involving the town attorney

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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- [OPD Planning and Zoning Training page](#)
- [Planning and Zoning Board Tests](#)
- [Office of Planning and Development website](#)

Next PLAN Webinar is scheduled for
September 21, 2023, from 12:00PM-1:00PM
Join OPD Principal Planner, Stephanie N. Verdile and
Michael Tardiff, Executive Director of the
Central New Hampshire Regional Planning Commission
For

“Recipe for CIP-How to start and operate a Capital Improvement Program”

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

