

B. Municipal Boards¹

1. Conditional Use Permits

[RSA 674:21](#) provides that innovative controls may be administered through the use of conditional use or special use permits. Conditional use permits are similar to special exceptions, and can be used to accomplish the same results. However, special exceptions can only be issued by the ZBA, [RSA 674:33, IV](#), while conditional use permits may be issued by any municipal board which has been given authority under the zoning ordinance, [RSA 674:21, II](#).

It is important to understand that the authority to require a conditional use permit must come directly from the municipality's zoning ordinance. [RSA 674:21](#). Because municipalities have only the authority granted to them by the legislature, conditional use permit requirements are restricted to zoning matters. Of course, this is not to say that the planning board cannot administer conditional use permits at the same time as site plan or subdivision review.

Regardless of which board is given authority to administer conditional use permits, in order to avoid a due process claim, municipalities must ensure that the conditional use permitting requirement and process is laid out in detail, including the factors that must be met for the conditional use permit to be issued. The conditional use permit provisions must "include [] the necessary specifics that involve the application procedure and the grant or denial" of the conditional use permit. *Fisher v. Viola*, 789 A.2d 782, 788 (Pa. Cmwlth. 2001). Also, a conditional use permit provision will be deemed unconstitutionally vague and a violation of due process "when persons of common intelligence must guess at its meaning" and applicability. *Id. at 787*. As such, the conditional use permit provision should be drafted to sufficiently convey clear warning to the average person of the covered activities. *Id. at 787*.

2. Planning Board

Conditional use permit requirements are often administered in the same manner as site plan and subdivision regulations, as this allows a more efficient and cost-effective review process before a single board.

Typically, planning board decisions on zoning matters are appealed to the ZBA. In contrast, innovative land use control decisions by the planning board, although they directly involve zoning matters, are appealable only to the superior court. [RSA 676:5, III](#). This is an important distinction.

3. Zoning Board of Adjustment

The ZBA also has authority under [RSA 674:21](#) to administer innovative controls, if so provided by the municipality's ordinance. As such, the ZBA can be given the authority to review applications for, and grant, conditional use permits. For those developers that also must go through a site plan or subdivision process with the Planning Board, giving the ZBA authority over conditional use permits, as opposed to

¹ Parts of this description come from *N.H. Town and City*, "[Look Before you Leap: Understanding Conditional Use Permits](#)", C. Christine Fillmore, Esq. (January 2006)

the planning board, requires the developer to go through an extra step and appear before another municipal board. Certain municipalities may find this second review desirable for certain types of large or complex developments.

When the ordinance provides for such administration by the ZBA, all innovative control proposals must still be reviewed by the planning board. [RSA 674:21, II](#). The Planning Board must comment on the proposal in writing and the ZBA must either incorporate the Planning Board's comments in the final decision or tailor its findings and decision to address the Planning Board's comments. [RSA 674:21, II](#). Innovative Land Use Controls: Reexamining Your Zoning Ordinance

4. Conservation Commission (administration of wetlands)

A Wetlands Ordinance that is administered by a Conservation Commission could include a requirement for conditional use permits, so long as it relates to zoning.

Again, however, when the ordinance provides for administration by a board other than the planning board, all innovative control proposals must still be reviewed by the planning board. [RSA 674:21, II](#). The Planning Board must comment on the proposal in writing and the ZBA must either incorporate the Planning Board's comments in the final decision or tailor its findings and decision to address the Planning Board's comments. [RSA 674:21, II](#).

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