Changes to Planning & Zoning Laws in 2024: *A Guide for Municipalities*

A Joint Advisory of the New Hampshire Municipal Association and the Office of Planning and Development at the New Hampshire Department of Business and Economic Affairs

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During the 2024 session, the legislature enacted a number of pieces of legislation that affect local planning and zoning processes and regulations. This guide serves as a summary of the effect of those changes.

Summary of Changes Pursuant to SB 437

SB 437 substantially alters municipal adoption of additional local amendments or regulations to the state building code. Under prior law, municipalities could adopt additional amendments to the state building code, provided that such regulations were no less stringent than the requirements of the state building code and the state fire code.

SB 437 amends this authority by continuing to allow municipal adoption of additional amendments to the state building code, which now must not be inconsistent with or less stringent than, nor intended to replace, the requirements of the most recent edition of the state building code adopted under RSA 155-A, or the state fire code adopted under RSA 153, and must relate to one article or section of the code. In other words, it is not permissible under new law to adopt, at the local level, an entirely new code.[1] It is, however, permissible to adopt amendments that are targeted to one article or section of the new code.

As under prior law, locally adopted building code amendments must continue to be submitted to the state building code review board for review and confirmation prior to adoption, no later than 90 days before final adoption in cities and no later than 10 days after the conclusion of the final public hearing in towns. **SB 437** limits the board's review to confirmation that the local amendment complies with RSA 674:51 or RSA 47:22, and a verification with the state fire marshal that there is no conflict with the fire code.

[1] For example, a municipality may not adopt the 2024 International Building Code in its entirety in place of the 2021 International Building Code, as amended by the state building code review board and adopted by the Legislature.

There is also a requirement contained in **SB 437** for municipalities to resubmit local amendments to the state building code and codes adopted prior to July 1, 2024 and their procedural history of adoption per RSA 155-A:10 to the state building code review board for review and confirmation that the local amendments are not less stringent than or inconsistent with the most recent edition of the state building code. **HB 1059**, which updates the definition of the state building code to include more recent versions of certain international codes and amendments approved by the building code review board, became law on July 1, 2024.

There is a similar requirement in **SB 437** for municipalities to resubmit local amendments to the state fire code adopted prior to July 1, 2024 and the procedural history of adoption per RSA 155-A:10 to the state fire marshal for review and confirmation that the local amendments are not less restrictive than or in conflict with the most recent edition of the state fire code and are based on sound engineering practices. **SB 599**, which updates the definition of the state fire code to include more recent versions of certain codes and amendments approved by the state board of fire control, became law on August 13, 2024.

These definitional updates by their nature require municipalities to decide whether to readopt local amendments to the state building code and state fire code as the prior adoption now references codes which have changed by legislative action. **These changes went into effect July 1, 2024.**

Summary of Changes Pursuant to HB 1202

HB 1202 includes two provisions. The first provision requires that the Department of Transportation issue driveway permits within 60 days of receiving an application for any existing or proposed residential use of land, including multifamily development that is not classified as a major driveway under the department's policy relating to driveways and access to the state highway system.

The second provision requires that the planning board or its delegate act on driveway permits issued by the Department of Transportation within 65 days of receipt of notification that the Department of Transportation issued the driveway permit.[2] **These changes go into effect October 22, 2024.**

Summary of Changes Pursuant to HB 1221

HB 1221 includes solid waste landfills in the definition of development of regional impact for the purpose of applications coming before the local land use board. If a solid waste landfill is proposed, any municipality which regulates solid waste landfills in its zoning ordinance, site plan review regulations, or subdivision regulations and requires application to the planning board for local approval of the landfill would be required to provide notice that such application is a development of regional impact to all municipalities located within New Hampshire that are: (a) within the watershed defined by the 8-digit Hydrologic Units from the National Hydrography Dataset 2011 where such landfill is located, and (b) if outside the watershed, located within 10 miles of the boundaries of the proposed landfill. **These changes went into effect September 17, 2024.**

[2] Generally, after the Department of Transportation issues a state driveway permit, no further action is necessary on the part of the planning board or its delegate.

Summary of Changes Pursuant to HB 1359

HB 1359 defines the phrase "directly across the street or stream" as used in the definition of "abutter" in RSA 672:3 for purposes of receiving testimony as well as notification. This change is intended to overturn the Supreme Court decision in *Seabrook Onestop, Inc. v. Town of Seabrook*, No. 2020-0251 (N.H. Sep. 16, 2021) which determined that under the then-existing definition of "abutter," any property that is "diagonally across the street" was not an "abutter."

The new definition includes adjacent properties as "determined by lines drawn perpendicular from all pairs of corner boundaries along the street or stream of the applicant to pairs of projected points on any property boundary across the street or stream that intersect these perpendicular lines. This includes any property that lies along the street or stream between each pair of projected points, or is withing 50 feet of any projected point."

Additionally, **HB 1359** narrows who may appeal to the board of adjustment concerning any matter within the board's powers pursuant to RSA 674:33 and 676:5 to the applicant, an abutter as defined by RSA 672:3, or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. **HB 1359** also narrows who may apply for a rehearing of a zoning board of adjustment order or decision, or any decision of the local legislative body or a board of appeals in regard to its zoning, pursuant to RSA 677:2 to the selectmen, any party to the action or proceedings, or an abutter as defined by RSA 672:3. Existing law allowed "any person aggrieved" to appeal or ask for a rehearing. **These changes went into effect September 1, 2024.**

Summary of Changes Pursuant to HB 1361

HB 1361 is a rewrite of the existing manufactured home subdivision statute, RSA 674:32 to clarify the archaic language previously used throughout. Additionally, **HB 1361** requires that municipalities, regardless of whether they permit construction of new manufactured housing parks, allow reasonable and realistic opportunities for the expansion of manufactured housing parks that existed within their geographic boundaries as of July 1, 2024. **These changes went into effect July 19, 2024.**

Summary of Changes Pursuant to HB 1371

HB 1371 grants municipalities the ability to include a waste reduction section in their master plans which outlines a municipality's solid waste reduction plan, including ways to reduce solid waste disposal, such as increasing reuse, recycling, composting, and/or hazardous and electronic waste management. Under the master plan statute, RSA 674:2, master plans must include a vision and land use section and may include other, statutorily enumerated sections.[3] **HB 1371** adds "waste reduction" to the list of *may* include sections. **These changes go into effect September 24, 2024.**

[3] Although legally, master plans may only include those sections listed under RSA 674:2, there is no enforcement mechanism and it is often the case that municipal master plans include provisions in addition to those allowed by statute.

Summary of Changes Pursuant to HB 1400

HB 1400 contains the most substantive changes to land use law and combines provisions originally contained within several bills filed this session. The following changes were added:

RSA 79-E: Community Revitalization Tax Relief Incentive

RSA 79-E was updated to allow the local legislative body of a municipality to establish tax relief for the owners of a building or structure currently being used for office use, in whole or in part, if such use is converted to residential use, in whole or in part.[4] The governing body of a municipality is responsible for designating the boundaries of the office conversion zone within the municipality where this tax relief shall apply. A municipality may also establish criteria for the public benefits, goals, and measures that will determine the eligibility of qualifying structures for tax relief located within a designated office conversion zone. Office use is defined as buildings or structures used or intended for use in whole or in part for the practice of a profession, the carrying on of a business or occupation or the conduct of a non-profit organization or government entity. Office use also includes co-working spaces. **These changes went into effect July 1, 2024, and are repealed January 1, 2035.**

Local Option to Authorize Governing Body to Make Zoning Changes Expanded

A new provision, RSA 674:18-a, provides a local option for local governments with zoning authority vested in their legislative body (*i.e.* non-charter towns, village districts with independent zoning authority, and counties in which there are located unincorporated places) to vote to allow their governing bodies to adopt amendments to the local zoning ordinances and the local zoning map. Under prior law, only cities and charter towns had the authority to decide whether to grant this authority to the governing body. Local governments who seek to adopt this local option should "place the question on the warrant of a special or annual meeting, by the governing body or by petition pursuant to RSA 39:3, or otherwise by acting upon the question of adoption [of this delegation of authority to amend the zoning ordinance and zoning map to the governing body] in accordance with its normal procedures for passage of ordinances."

If the local legislative body votes to delegate this authority, a majority vote of the governing body during any time of the year, after at least one full public hearing pursuant to RSA 675:7, would be sufficient to amend the local zoning ordinances and map. **These changes went into effect July 1, 2024.**

Local Regulation of Parking Requirements

HB 1400 contains two separate provisions related to local regulation of parking requirements for residential uses. The first authorizes the local legislative body of a city,

[4] An amendment to the definition of "qualifying structure" under RSA 79-E:2 suggests that conversion from industrial, or commercial use to residential use *also* qualify for tax relief, but no language authorizing local adoption of such conversions were included in new RSA 79-E:4-d. As such, this tax relief is limited to office conversions.

town, or county in which there are located unincorporated towns or unorganized places to regulate "accessory parking for vehicles,[5]" subject to certain limitations:

- The local regulations cannot require more than 1.5 residential parking spaces per unit for studio and one-bedroom units under 1,000 square feet that meet the requirements for workforce housing under RSA 674:58 IV.
- The local regulations cannot require more than 1.5 residential parking spaces per unit for multi-family developments of 10 units or more.

The second provision requires that, if a proposed residential use proposes to meet the on-site parking requirements prescribed by a local ordinance or regulation with an "alternative parking solution" due to economic considerations,[6] the planning board shall be required to consider the "alternative parking solution." The phrase "alternative parking solution" is defined by the statute to mean, "a proposal by an applicant to meet the parking demand created by a proposed residential use as a substitute for meeting the on-site parking requirements." In other words, once the anticipated parking demand is determined, if the applicant can propose a solution to meeting that demand – other than by meeting the locally adopted on-site parking requirements – then the planning board must consider that alternative.

This second provision is not limited to a specific type of residential use, such as multi-family developments, nor does it require anything more than that the applicant meet the anticipated demand for the proposed residential use. For example, if an applicant proposes a large residential development and can demonstrate that the anticipated demand is lower than the locally adopted regulation, then the planning board must use the anticipated demand as the starting point for how many parking spaces will be required, not the locally adopted regulation. As such, it is possible that a multi-family development of 10 units or more could see an anticipated demand of fewer than 1.5 residential parking spaces per unit, e.g. 1.3 spaces, and that 1.3 spaces would be the start of the inquiry for how to meet the demand, not the locally adopted regulation nor the prior statutory provision of a maximum requirement of 1.5 spaces.

Importantly, this second parking provision states that, "[i]f the applicant can demonstrate that the alternative parking solution will meet the parking demand created by the proposed residential use, a planning board shall be required to approve the alternative parking solution proposed by the applicant." To continue the example above, if the applicant can demonstrate that the parking demand is 1.3 spaces and the proposed solution meets that demand, then the planning board must approve that solution.[7]

The second provision also states, "if a planning board during the review process of a subdivision plat, site plan, or other land use application for the proposed residential use

[5] "Accessory parking for vehicles" is not defined, but, presumably, means a use customarily incidental and subordinate to the principal use and located on the same lot with this principal use.
[6] The phrase "economic considerations" is not defined, but, presumably, means additional cost to meet the local on-site parking requirements as compared to the alternative parking solution.
[7] Nothing in the new law addresses non-residential uses or mixed-uses.

doesn't agree with the applicant's determination that the alternative parking solution will meet the parking demand created by the proposed residential use, the planning board can request third-party review under RSA 676:4-b, I." This provision goes on to say, "the planning board shall not be required to approve the alternative parking solution if the results of the third-party review under RSA676:4-b, I, conclude that the proposed alternative parking solution will not meet the parking demand created by the proposed residential use." This provision also clarifies that, "planning boards shall have the authority under RSA674:16-a to approve residential uses with alternative parking solutions which may be inconsistent with the requirements of their zoning ordinance."

While municipalities which regulate residential parking should update their local regulations to reflect the new statutory minimums listed above, they should also be aware that applicants that challenge the assumed, anticipated demand contained within both the local regulation and the statute, will be evaluated under a different standard based on anticipated demand, not locally or statutorily prescribed minimums.

The first parking provision does not go into effect until January 1, 2025, but the second parking provision went into effect July 1, 2024.

Summary of Changes Pursuant to HB 1567

HB 1567 alters RSA 672:1, V-a, the home-based childcare statute, and adds additional language to RSA 674:16. This replaces the existing requirement[8] of allowing six full-time preschool aged children and three part-time school aged children at a home-based day care with a requirement that such care is allowed as an accessory use to any primary residential use by right or by conditional use permit if all requirements for such programs adopted in rules of the department of health and human services (He-C 4002) are met. The new section in RSA 674:16, VI also states, "Family or group family childcare...shall not be subject to local site plan review in any zone where a primary residential use is permitted." If a municipality chooses to regulate a home-based childcare via conditional use permit it should pay careful to attention to make sure that the conditional use permit requirements don't reference the site plan review requirements or mimic the intent of site plan review. This law doesn't affect the authority of local health inspectors, fire inspectors, and code enforcement officers to regulate and inspect family or group family childcares to ensure compliance with health and safety requirements in the He-C 4002 rules. **These changes go into effect September 24, 2024.**

Time to Get Started

Please understand that this article is only an overview of the changes to these laws. Many of the issues outlined here will require careful review of existing local ordinances and regulations, and municipalities are strongly encouraged to consult with their legal counsel or professional planning staff as they consider how to comply with these new laws. NHMA's legal staff and OPD staff also is available to answer questions about the law, although we do not have the resources to assist with reviewing and drafting ordinances or local regulations.

[8] Under prior RSA 672:1, V-a, the phrase "should not be discouraged or eliminated" in the statute meant that in effect the care of up to six full-time preschool children and three part-time school age children in the home of a childcare provider, should not be prohibited in any zoning district. However, this language was located in the zoning ordinance purpose statute, and was therefore not actively enforced.