

SUMMARY OF CHANGES

The following table summarizes the substantial changes that have been made in this 2024 version of the *Zoning Board of Adjustment in New Hampshire: A Handbook for Local Officials* since the 2023 Handbook update. ~~Strikethrough~~ elements have been deleted and underscored elements have been added.

CHAPTER	IMPACTED PAGE #S	DESCRIPTION OF CHANGE
Global Changes	All	<p>Year references on the cover page and in the footer. Updated links throughout.</p>
<p>Chapter II: <i>Powers and Duties of the Zoning Board of Adjustment</i></p>	II-1	<p>Legislative related addition under section “AUTHORITY TO REGULATE THE USE OF LAND” RSA 674:16 Grant of Power:</p> <p><u>RSA 674:16 Grant of Power</u></p> <p><u>II. The power to adopt a zoning ordinance under this subdivision expressly includes the power to adopt innovative land use controls which may include, but which are not limited to, the methods contained in RSA 674:21.</u></p> <p><u>III. In its exercise of the powers granted under this subdivision, the local legislative body of a city, town, or county in which there are located unincorporated towns or unorganized places may regulate and control the timing of development as provided in RSA 674:22.</u></p> <p><u>IV. Except as provided in RSA 424:5 or RSA 422-B or in any other provision of Title XXXIX, no city, town, or county in which there are located unincorporated towns or unorganized places shall adopt or amend a zoning ordinance or regulation with respect to antennas used exclusively in the amateur radio services that fails to conform to the limited federal preemption entitled Amateur Radio Preemption, 101 FCC 2nd 952 (1985) issued by the Federal Communications Commission.</u></p> <p><u>V. In its exercise of the powers granted under this subdivision, the local legislative body of a city, town, or county in which there are located unincorporated towns or unorganized places may regulate and control accessory uses on private land. Unless specifically proscribed by local land use regulation, aircraft take offs and landings on private land by the owner of such land or by a person who resides on such land shall be considered a valid and permitted accessory use.</u></p> <p><u>VI. In its exercise of the powers granted under this subdivision, the local legislative body of a city, town, or county in which there are located unincorporated towns or unorganized places shall, as described in RSA 672:1, V-a, allow home-based care (family care and group family care) by right or pursuant to a conditional use permit as long as all requirements for such programs adopted in rules of the department of health and human services (He-C 4002) are met. Family or group family child care shall be allowed as an accessory use to any primary residential use and shall not be subject to local site plan review in any zone where a primary residential use is permitted. If all requirements of the department of health and human services are met, but an application for a conditional use permit is pending with the municipality in which the home-based child care facility is located, an applicant may begin operation during such time until the permit is granted or denied.</u></p>

CHAPTER	IMPACTED PAGE #S	DESCRIPTION OF CHANGE
		<p><u>VII. In its exercise of the powers granted under this subdivision, the local legislative body of a city, town, or county in which there are located unincorporated towns or unorganized places may regulate accessory parking for vehicles, but shall not require more than 1.5 residential parking spaces per unit for studio and one bedroom units under 1000 square feet that meet the requirements for workforce housing under RSA 674:58, IV, and shall not require more than 1.5 residential parking spaces per unit for multi-family developments of 10 units or more.</u></p>
	II-2	<p>Legislative related addition under section “AUTHORITY TO REGULATE THE USE OF LAND” RSA 674:17 Purposes of Zoning Ordinances:</p> <p><u>RSA 674:17 Purposes of Zoning Ordinances</u></p> <p><u>III. Except as provided in RSA 424:5 or RSA 422-B or in any other provision of Title XXXIX, no city, town, or county in which there are located unincorporated towns or unorganized places shall adopt a zoning ordinance or regulation with respect to antennas used exclusively in the amateur radio service that fails to conform to the limited federal preemption entitled Amateur Radio Preemption, 101 FCC 2nd 952 (1985) issued by the Federal Communications Commission.</u></p> <p><u>IV. If a municipality allows an increased density, reduced lot size, expedited approval, or other dimensional or procedural incentive under this section for the development of housing for older persons, as defined and regulated pursuant to RSA 354-A:15, VIII, it may allow the same incentive for the development of workforce housing as defined in RSA 674:58, IV. Beginning July 1, 2023, incentives established for housing for older persons shall be deemed applicable to workforce housing development.</u></p>
Chapter II: <i>Powers and Duties of the Zoning Board of Adjustment</i>	II-2-3	<p>Legislative related addition under section “AUTHORITY TO REGULATE THE USE OF LAND” RSA 674:18-a Alternative Procedure for Adoption of Zoning Ordinances:</p> <p><u>RSA 674:18-a Alternative Procedure for Adoption of Zoning Ordinances</u></p> <p><u>I. Any non-charter town, village district, or county in which are located unincorporated places, may adopt the provisions of this section by placing 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 section in accordance with its normal procedures for passage of ordinances.</u></p> <p><u>II. Upon adoption, the local governing body shall be authorized to adopt amendments to the local zoning ordinances and the local zoning map by majority vote of the governing body after at least one full public hearing that complies with RSA 675:7, without a vote by the usual local legislative body or by a vote of voters in the jurisdiction.</u></p> <p><u>III. The procedure for adoption of amendments to zoning ordinances or bylaws and the zoning map under this section shall be construed to be an adoption by the local legislative body as defined in RSA 672:8.</u></p>

CHAPTER	IMPACTED PAGE #S	DESCRIPTION OF CHANGE
<p>Chapter II: <i>Powers and Duties of the Zoning Board of Adjustment</i></p>	<p>II-6</p>	<p>Legislative related addition and deletion under “APPEAL FROM ADMINISTRATIVE DECISION” in RSA 674:33 Powers of Zoning Board of Adjustment in second to last paragraph:</p> <p>In order to bring an appeal of an administrative decision, a person must also have standing. Merely being a resident and taxpayer of a town is not enough to confer standing to appeal a decision of the administrative officer who determined that there was not sufficient basis to pursue an alleged violation of the zoning ordinance concerning the voluntary merger of two lots. See <i>Goldstein v. Town of Bedford</i> (November 22, 2006). <u>In 2024, RSA 676:5, I was amended to narrow who has standing to appeal an administrative decision to an abutter as defined in RSA 672:3, or any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. The phrase “directly across the street or stream” in the definition of “abutter” in RSA 672:3 was also amended to include 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 within 50 feet of any projected point.”</u></p> <p>Similarly, in <i>Golf Course Investors of NH, LLC v. Town of Jaffrey & a.</i> (April 12, 2011), the court found that seven residents who tried to appeal a planning board decision to the ZBA that a condominium conversion did not require site plan review did not have standing as “persons aggrieved.” None were abutters, did not address how their properties would be directly affected, were actually in favor of the project with the acceptance of its size, and one had even attended the planning board meeting. To establish standing, an appealing party must show “some direct, definite interest in the outcome of the action or proceeding.” Four factors are considered when determining whether a non-abutter has sufficient interest to confer standing: (1) the proximity of the appealing party’s property to the property for which approval is sought; (2) the type of change being proposed; (3) the immediacy of the injury claimed; and (4) the appealing party’s participation in the administrative hearings. See <i>Weeks Restaurant Corp. v. City of Dover</i>, 119 N.H. 541 (1979).</p>
	<p>II-24-26</p>	<p>Legislative related revisions under “THE ZBA ACTING AS THE BUILDING CODE BOARD OF APPEALS” in section State and Local Building Codes under RSA 674:34 Powers of Building Code Board of Appeals; RSA 155-A:1 Definitions, and RSA 674:51 Power to Amend State Building Code and Establish Enforcement Procedures and addition of a box at the end:</p> <p>RSA 674:34 Powers of Building Code Board of Appeals</p> <p>The building code board of appeals shall hear and decide appeals of orders, decisions, or determinations made by the building official or fire official relative to the application and interpretation of the state building code or state fire code as defined in RSA 155-A:1. An application for appeal shall be based on a claim that the true intent of the code or the rules adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is</p>

CHAPTER	IMPACTED PAGE #S	DESCRIPTION OF CHANGE
<p>Chapter II:</p> <p><i>Powers and Duties of the Zoning Board of Adjustment</i></p>	<p>II-24-26</p>	<p>proposed. The board shall have no authority to waive requirements of the state building code or the state fire code.</p> <p><u>I. The building code board of appeals shall hear and decide appeals of orders, decisions, or determinations made by the building official or fire official relative to the application and interpretation of the state building code or state fire code as defined in RSA 155-A:1. An application for appeal shall be based on a claim that the true intent of the code or the rules adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of the state building code or the state fire code.</u></p> <p><u>II. Appeals of decisions of any local building code board of appeals shall be made within 30 days of the board's decision to the state building code review board as outlined under RSA 155-A:10, IV(c).</u></p> <p>RSA 155-A:1 Definitions</p> <p>IV. "New Hampshire building code" or "state building code" means the adoption by reference of the International Building Code 2009<u>2021</u>, the International Existing Building Code 2009<u>2021</u>, the International Plumbing Code 2009<u>2021</u>, the International Mechanical Code 2009<u>2021</u>, the International Energy Conservation Code 2009<u>2018</u>, <u>the International Swimming Pool and Spa Code 2021</u> and the International Residential Code 2009<u>2021</u>, as published by the International Code Council, and the National Electrical Code 2014<u>2020</u>, as published by the <u>National Fire Protection Association, Inc. as amended reviewed and recommended</u> by the state building code review board, <u>including all amendments reviewed and approved by the board as of May 10, 2024</u>, and ratified by the legislature in accordance with RSA 155-A:10. The provisions of any other national code or model code referred to within a code listed in this definition shall not be included in the state building code unless specifically included in the codes listed in this definition.</p> <p>RSA 674:51 Power to Amend State Building Code and Establish Enforcement Procedures</p> <p>The state building code established in RSA 155-A shall be effective in all towns and cities in the state and shall be enforced as provided in RSA 155-A:7. In addition, towns and cities shall have the following authority:</p> <p>I. The local legislative body may enact as an ordinance or adopt, pursuant to the procedures of RSA 675:2-4, additional provisions of the state building code for the construction, remodeling, and maintenance of all buildings and structures in the municipality, provided that such additional regulations are not less stringent than the requirements of the state building code. The local legislative body may also enact a process for the enforcement of the state building code and any additional regulations thereto, and the provisions of a nationally recognized code that are not included in and are not inconsistent with the state building code. Any local enforcement process adopted prior to the effective date of this paragraph shall remain in effect unless it conflicts with the state building code or is amended or repealed by the municipality</p> <p><u>I. The local legislative body may enact as an ordinance or adopt, pursuant to the procedures of RSA 675:2-4, additional amendments to the state building code for structures in the municipality, providing that such additional amendments are not inconsistent with or less stringent than,</u></p>

CHAPTER	IMPACTED PAGE #S	DESCRIPTION OF CHANGE
<p>Chapter II:</p> <p><i>Powers and Duties of the Zoning Board of Adjustment</i></p>	<p>II-24-26</p>	<p><u>nor intended to replace, the requirements of the most recent edition of the state building code adopted under RSA 155-A, and provided that each amendment submitted to the building code review board relates to one article or section of that code. The local legislative body may adopt a nationally recognized code not included in, and not inconsistent with, the state building code, except for a nationally recognized code which has the same or similar scope or purpose, as determined by the building code review board, that is included in the most recent edition of the state building code adopted under RSA 155-A, and the intent of this restriction shall not be avoided by the adoption of local amendments as determined by the building code review board. The local legislative body may also enact a process for the enforcement of the state building code, additional amendments and any additional codes adopted under this paragraph. Local amendments and codes regulated by this paragraph adopted prior to July 1, 2024, and the procedural history of adoption per RSA 155-A:10 shall be submitted for review to the building code review board for review and confirmation that such additional amendments are not inconsistent with or less stringent than, nor intended to replace, the requirements of the most recent edition of the building code adopted under RSA 155-A. No local amendment shall be enforced if it has not been submitted to the building code review board within 60 days of the effective date of this paragraph. Upon the withholding of confirmation of a submitted local amendment by the state building code review board, the amendment shall not be enforced.</u></p> <p>II. Any such ordinance adopted under paragraph I by a local legislative body shall be submitted to the state building code review board for informational purposes.</p> <p><u>II. Any such ordinance enacted or adopted under paragraph I by a local legislative body shall not be enforced unless confirmed by the building code review board pursuant to RSA 155-A:10, IV(c). The procedural history of local adoption relating to published notice, public hearing, and vote of approval shall be submitted to the board within 30 days of enactment or adoption and prior to enforcement.</u></p> <p><u>V. No municipality or local land use board as defined in RSA 672:7 shall adopt any ordinance, regulation, code, or administrative practice requiring the installation of automatic fire suppression sprinklers in any new or existing detached one or 2-family dwelling unit in a structure used only for residential purposes, or in existing buildings that contain, or will contain, no more than 4 dwelling units, unless fire sprinklers are existing or are required by a nonresidential occupancy. Notwithstanding any provision of law to the contrary, no municipality or local land use board shall enforce any existing ordinance, regulation, code, or administrative practice requiring the installation or use of automatic fire suppression sprinklers in any manufactured housing unit as defined in RSA 674:31 situated in a manufactured housing park as defined in RSA 205-A:1, II. Nothing in this paragraph shall affect the ability of an applicant for a local land use permit to include the installation of fire suppression sprinklers pursuant to RSA 674:36, IV, or affect the validity or enforceability of such inclusion.</u></p> <p>A municipality may adopt additional codes from the International Code Council, which are not included in the SBC.</p> <p>RSA 674:51-a Local Adoption of Building Codes by Reference In addition to the local powers under RSA 674:51 a municipality may adopt by reference any of the codes promulgated by the International Code Conference which are not included in the state building code under RSA 155-A.</p>

CHAPTER	IMPACTED PAGE #S	DESCRIPTION OF CHANGE
<p>Chapter II: <i>Powers and Duties of the Zoning Board of Adjustment</i></p>	<p>II-24-26</p>	<p><u>RSA 675:51.I was substantially amended in 2024 to limit the scope of additional local amendments or regulations to the state building code that a municipality may adopt. 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.</u></p> <p><u>RSA 674:51.I and RSA 47:22 as amended by 2024 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. It is, however, permissible to adopt amendments that are targeted to one article or section of the new code.</u></p> <p><u>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.</u></p> <p><u>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. 2024 HB 1059, which updates the definition of the state building code in RSA 155-A:1.IV to include more recent versions of certain international codes and amendments approved by the building code review board, became law on July 1, 2024.</u></p>
<p>Chapter III: <i>Procedures</i></p>	<p>III-1-2</p>	<p>Legislative related revisions under “APPLICATION” in RSA 676:5 Appeals to Board of Adjustment.</p> <p>i. Appeals to the board of adjustment concerning any matter within the board's powers as set forth in RSA 674:33 may be taken by any person aggrieved 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. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.</p> <p><u>RSA 676:5, I as amended in 2024, 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.</u></p> <p>The chairperson, clerk, town planner or whoever reviews applications submitted to the board should consider whether or not the application has potential for regional impact <u>under RSA 36:56.</u></p>

CHAPTER	IMPACTED PAGE #S	DESCRIPTION OF CHANGE
<p>Chapter III: <i>Procedures</i></p>	<p>III-6</p>	<p>Legislative-related revision and addition under “NOTIFICATION” to the section RSA 672:3 Abutter a paragraph after the RSA language and a box:</p> <p>"Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. <u>"Directly across the street or stream" shall be 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. Any property that lies along the street or stream between each pair of projected points, or is within 50 feet of any projected point shall be considered an abutter.</u> For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.</p> <p><u>RSA 672:3 as amended in 2024 defining the phrase “directly across the street or stream” in the definition of “abutter” for purposes of receiving testimony as well as notification is intended to overturn the Supreme Court decision in <i>Seabrook Onestop, Inc. v. Town of Seabrook</i>, 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.”</u></p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><u>For additional guidance on how to determine who is an abutter or not under 2024 HB 1359, please refer to NHMA Supplementary Guidance on HB 1359.</u></p> </div>
<p>Chapter IV: <i>Appeal from A Board’s Decision</i></p>	<p>IV- 1</p>	<p>Legislative-related revision and addition under “REHEARING” under RSA 677:2 Motion for Rehearing of Board of Adjustment, Board of Appeals, and Local Legislative Body Decisions:</p> <p><u>RSA 677:2 Motion for Rehearing of Board of Adjustment, Board of Appeals, and Local Legislative Body Decisions</u></p> <p>Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby <u>an abutter as defined by RSA 672:3</u> may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefore is stated in the motion.</p> <p><u>RSA 677:2 as amended in 2024 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.</u></p>

CHAPTER	IMPACTED PAGE #S	DESCRIPTION OF CHANGE
<p>Chapter IV: <i>Appeal from A Board's Decision</i></p>	<p>IV-2-3</p>	<p>Legislative-related revision and addition under “REHEARING” under RSA 677:3 Rehearing by Board of Adjustment, Board of Appeals, or Local Legislative Body:</p> <p>In order to submit a motion for rehearing, a person must have “standing” – i.e., the legal right to challenge the board’s decision. In addition to any party to the proceedings, a butters as defined in RSA 672:3, persons who own property close enough to the land in question to demonstrate that they are affected directly by the board’s action (i.e., a person aggrieved), and the Board of Selectmen all have standing to appeal a ZBA decision. (See <i>Hooksett Conservation Commission v. Hooksett Zoning Board of Adjustment</i>, 149 N.H. 63 [2003].) The board should evaluate the potential impact of ZBA action on the person requesting the rehearing to determine if they are aggrieved and have standing to file the motion. The motion should not be granted if the person requesting the rehearing is not impacted differently than the public at large. See <i>Weeks Restaurant Corp. v. City of Dover</i>, 119 N.H. 541 (1979).</p> <p>Standing exists only when relevant factors lead the board to conclude that the plaintiff has a sufficient interest in the outcome of the proposed zoning decision. Where the only adverse impact that may be felt by the plaintiffs is that of increased competition with their businesses, there is not sufficient harm to entitle plaintiffs’ standing to appeal. See <i>Nantilus of Exeter, Inc. v. Town of Exeter and Exeter Hospital</i>, 139 N.H. 450 (1995).</p> <p>If the board reverses a decision at a rehearing, a new aggrieved party <u>who is a party to the action or proceedings</u> results and that party then has 30 days in which to appeal for a rehearing on the new decision. “This triggered the need for plaintiff to apply for a rehearing as a precondition to appeal. This does not mean, as defendants suggest, that boards of adjustment will be forced to consider an endless series of rehearing applications, for it is only when the board reverses itself at a rehearing - thus creating new aggrieved parties - that the statute comes into play.” <i>9 v. City of Manchester</i>, 118 N.H. 158 (1978). See <i>Dzjama v. City of Portsmouth</i>, 140 N.H. 542 (1995).</p>