

The Board of Adjustment In New Hampshire

A Handbook for Local Officials

November 2016

NH Office of Energy and Planning

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**Current Through The
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PREFACE

The Office of Energy and Planning (OEP) provides assistance to New Hampshire municipalities in their planning efforts. As part of that assistance, the OEP staff responds to numerous requests for information and assistance from cities and towns concerned about zoning and the duties and responsibilities of the board of adjustment. This handbook is a guide for board members and others on the procedures, organization, powers, and duties of the board of adjustment.

The Board of Adjustment in New Hampshire: A Handbook for Local Officials was first prepared by Robert C. Young, Planning Associate, under the auspice of the New Hampshire Planning and Development Commission in 1959. The handbook was revised in 1961, 1964, 1969, 1972, and 1979. It was rewritten in 1985 to reflect the 1983 re-codification of New Hampshire's planning and land use regulations and interpretations of state laws as set forth in decisions by the New Hampshire Supreme Court. Additional revisions took place in 1988, 1993, 1994, 1997, 2001 and 2002 to reflect changes in state law and statutory interpretations. The handbook has been updated annually since 2002.

This edition incorporates statutory changes enacted through the 2016 legislative session and additional supreme court decisions that further clarify the authority of zoning boards of adjustment. Special recognition and appreciation is given to Attorneys Timothy Bates, Benjamin Frost, Peter Loughlin and H. Bernard Waugh for their review of and comments on the 2002 edition and for the valued use of their materials listed in the bibliography.

This handbook is presented as an explanation of the law and not the law itself. State statutes are presented in 10 pt. Arial font. Citations are given for New Hampshire Supreme Court decisions, and direct quotes are in *italics*.

Information regarding handbooks and other publications available from the NH Office of Energy and Planning can be found at <http://www.nh.gov/oep/planning/resources/publications.htm>.

CAUTION

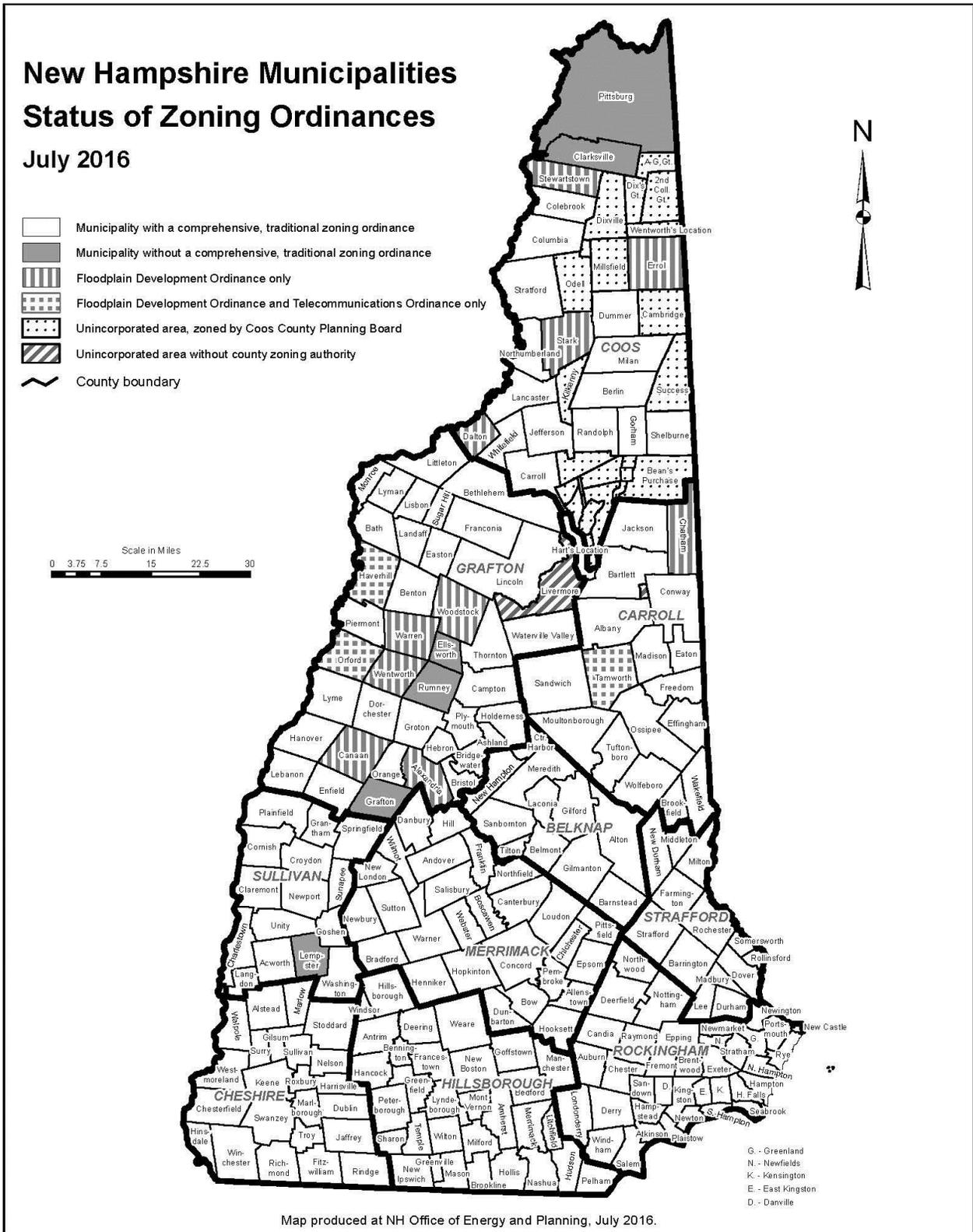
This handbook is designed to serve as an introduction to the organization, powers, duties and procedures of boards of adjustment in New Hampshire. The material included is as accurate and reliable as possible at this point in time.

However, given the unique nature of individual parcels of land across the state and the wide variety of development proposals, this material should be taken as a guide. Obviously, all principles outlined herein may not be entirely applicable to every parcel or proposal in the state.

Accordingly, this guide should be used as a starting point for discussions regarding a particular parcel or proposal. Cases, treatises, statutes, court rulings and the like referred to in this guide should be checked to determine whether they have been reversed, distinguished, or amended, or whether they are even applicable to the unique parcel under consideration. It is also recommended that the board of adjustment seek legal counsel whenever there are any procedural or legal questions.

This material is being offered as a service to users and is considered “as is” without any expressed or implied guarantee or warranty by the State of New Hampshire or any subdivision thereof pertaining to the operation and administration of the board or for the accuracy of the information provided.

NEW HAMPSHIRE MUNICIPALITIES WITHOUT A ZONING ORDINANCE



NEW HAMPSHIRE VILLAGE DISTRICTS WITH ZONING ORDINANCES

This table includes those village districts identified as of November 2016 and does not represent a comprehensive review of all village districts in the state.

As more village districts that have adopted zoning are identified, this list will be updated. For a current listing, please visit the Village Districts heading on the Land Use Boards and Municipal Officials page of the Resource Library at:

<http://www.nh.gov/oep/resource-library/land-use/index.htm>

VILLAGE DISTRICT	TOWN	PLANNING COMMISSION	COUNTY	ADOPTION DATE
Haverhill Corner Precinct	Haverhill	NCC	Grafton	2/27/89
Hopkinton Village Precinct	Hopkinton	CNHRPC	Merrimack	2/29/60
Kearsarge Lighting Precinct	Conway	NCC	Carroll	2/13/73
Little Boar's Head	North Hampton	RPC	Rockingham	9/7/37
Lower Bartlett Water Precinct	Bartlett	NCC	Carroll	4/1/80
Mountain Lakes Village District	Haverhill	NCC	Grafton	3/16/96
North Walpole Village District	Walpole	SwRPC	Cheshire	10/6/36
Rye Beach Village District	Rye Beach	RPC	Rockingham	9/24/37
Seabrook Beach Village District	Seabrook	RPC	Rockingham	3/30/77

NEW HAMPSHIRE REGIONAL PLANNING COMMISSIONS

Central New Hampshire Regional Planning Commission
Lakes Region Planning Commission
Nashua Regional Planning Commission
North Country Council, Inc.
Rockingham Planning Commission
Southern New Hampshire Planning Commission
Southwest Region Planning Commission
Strafford Regional Planning Commission
Upper Valley Lake Sunapee Regional Planning Commission

RECORD OF AMENDMENTS

2007

- Removed Groton from the towns with no zoning map.
- Amended Chapter II: Use and Area Variances to add reference to *John R. Harrington & a. v. Town of Warner* and text from Loughlin, 15 New Hampshire Practice: Land Use Planning and Zoning, 3rd Ed., § 24.03A.
- Amended Chapter IV: Appeal from Board's Decision to add a portion about conducting the meeting to consider a motion for rehearing and added reference to *Colla v. Town of Hanover*.
- Added *John R. Harrington & a. v. Town of Warner* to Appendix D Zoning Board of Adjustment Case Law.
- Added *Colla v. Town of Hanover* to Appendix D Zoning Board of Adjustment Case Law.

2008

Note: The entire variance section was amended in 2009 so some of the changes noted below may no longer apply.

- Added a reference to *Chester Rod and Gun Club, Inc. v. Town of Chester* in the public interest variance criteria section of Chapter II on page II-9.
- Added a reference to *Garrison v. Town of Henniker* in the variance section under the first prong of the *Simplex* test for a use variance that there must be something unique about the property, not just that it is just appropriate for the proposed use.
- Added “Tests to Determine Whether ‘Unnecessary Hardship’ Exists to Justify Grant of a ‘Use’ Variance” to the unnecessary hardship section of the variance criteria.
- Added “Unnecessary Hardship – Two Factors” to the variance section.
- Added a reference to *Malachy Glen Associates, Inc. v. Town of Chichester* (March 20, 2007) in the “spirit of the ordinance must be observed” variance criteria section on page II-10.
- Added reference to the apparent conflict between RSA 676:3 (requiring minutes to be available within 144 hours) and RSA 91-A:2, II revised in 2007 requiring minutes to be available within 5 “business days”) in:
 - Chapter III: Procedures - Public Hearing;
 - Chapter III: Procedures - Attaching Conditions and Time Limits;
 - Chapter IV: Appeal From Board's Decision;
 - Suggested Rules of Procedure in Appendix A.
- Added an excerpt from “Arranging Your Furniture – Operational Basics For Local Land Use Boards,” H. Bernard Waugh, Jr., Esq., about how to produce the written decision in the Decision section of Chapter III, Procedures on page III-14.
- Added a quote from *Michelle J. Robinson v. Town of Hudson* No. 2005-687, December 20, 2006, on page III-16.
- The board has the inherent right to reconsider their decision to consider a motion for rehearing as long as it is within the 30-day appeal period [*74 Cox Street, LLC v. City of Nashua* (September 21, 2007)], page IV-2.
- Added a reference to *Hooksett Conservation Commission v. Hooksett ZBA* (January 23, 2003) that clarifies that the Board of Selectmen is the only municipal board that has standing to appeal a ZBA decision, page IV-2.
- Added a reference to *McDonald v. Town of Effingham ZBA*, 152 N.H. 171 (2005) that the ZBA should consider granting a motion for rehearing if they want to add additional reasons for denial, page IV-3.
- Added a reference to the board reconsidering their own decision in the rules of procedure in Appendix A on page A-3.
- Cases added to Appendix D Zoning Board of Adjustment Case Law:
 - *McDonald v. Town of Effingham ZBA*
 - *Chester Rod and Gun Club, Inc. v. Town of Chester*
 - *Garrison v. Town of Henniker*
 - *Michelle J. Robinson v. Town of Hudson*
 - *Malachy Glen Associates, Inc. v. Town of Chichester*
 - *74 Cox Street, LLC v. City of Nashua*

October 2009

- Clarification of the limited role of an inactivated alternate on page I-3.
- An alternate member can be designated to temporarily fill a vacant position on page I-4.
- Clarification that a public hearing can be continued to a specific time, place and date provided announcement is made prior to the vote to continue on page III-8.
- Minutes and the decision must be made available to the public within five business days rather than 144 hours pursuant to HB210 and SB189 on pages III-9, III-16, IV-1 and A-4.
- Copies of written decisions must be made available to applicants pursuant to SB189 on page III-15 and conditions must be included on the plat on page III-17.
- Communities have the choice as to whether to create an elected or appointed zoning board of adjustment. Previously, the statutes included provisions for how to establish a board using either organizational structure but only included provisions for how to switch from a previously established and elected board to an appointed board. New language was drafted through HB534 [CL286 (2009)] that permits, and sets the process, of switching from an appointed board to elected board on page I-2.
- General revision to the Variance section in Chapter II - Powers and Duties of the Board of Adjustment, reflecting the change to RSA 674:33 pursuant to SB147 on pages II-7 through II-15.
- Changes to various references to RSA 91-A as a result of statute changes in 2008 and 2009.
- Changes to Appendix B, *Instructions to Applicants Appealing to the Board of Adjustment*, to reflect the revised hardship criteria for a variance and that a motion for rehearing must be applied for within 30 days of the decision on pages B-1 and B-3.
- Changes to Appendix C, Suggested Forms - *Application for a Variance* - removing the distinction between a “use” and “area” variance on page C-4 and C-5.
- Changes to Appendix C, Suggested forms - *Worksheet: Statement of Reasons - Variance*, to reflect the revised hardship criteria for a variance on page C-10.
- Addition of several case summaries relating to the granting of variances: *Naser, Nine A, Daniels* and *Farrar* on pages D-31 through D-34.

March 2010

The following changes were incorporated in March 2010 during the overall format revision of the handbook.

- Replaced “honest mistake” with “good faith error in measurement or calculation” in the second full paragraph following the statute on page II-17; replaced “legitimate mistake” with “good faith error in measurement or calculation” in the Equitable Waiver section of the Instructions to Applicants on page B-2, and a similar replacement in the Application for Equitable Waiver on page C-7. These replacements were in response to *Taylor v. Town of Wakefield* (2008).
- Added a new subsection, Consideration of Evidence and Testimony, relating to *Continental Paving v. Litchfield* in the Public Hearing portion of Chapter III on page III-10.
- Revised the Variance Application form to include a section for the *Governor’s Island* test if an applicant cannot meet the two criteria for an unnecessary hardship on page C-5.
- Revised the Variance Worksheet to include a section for the *Governor’s Island* test if an applicant cannot meet the two criteria for a hardship on page C-10.

October 2010

The following changes were incorporated in October 2010 during the annual revision of the handbook.

- Added the new paragraph III in 673:5 clarifying the term of office of an appointed member and that they can remain in office until a successor is appointed on page I-2.
- Added the new paragraph V to RSA 673:6 regarding participation in meetings by an unactivated alternate member and amended two paragraphs on page I-3 and I-4. Added a new second paragraph to the Members and Alternates section of the Rules of Procedure in Appendix A.
- Amended the Expenditure of Fees section on page III-10 and III-11 to reflect the changes to RSA 673:16 and 676:5 expressly allowing a ZBA to assess fees to cover costs, administrative expenses and third party review and consultation.
- Added a new section, **Abandonment of Nonconforming Uses**, to Chapter II on page II-21 to reflect *Pike Industries, Inc. v. Brian Woodward* (May 7, 2010).

- Various revisions to the Suggested Rules of Procedure in Appendix A:
 - 2. Quorum - every effort should be made to see that a full board is present including one or two alternates.
 - If less than a full board is present, the applicant should be given the option to proceed or wait until a full board is present.
 - 5. Voting - addition of a new section clarifying that a tie vote does not result in the automatic approval of the opposite of the motion with the following section about Reconsideration renumbered as 6.
 - In the Applications section, clarification that appeals of administrative decisions can be taken within a designated time period (30 days are recommended) or when the decision becomes known or reasonably could have been known by the petitioner as determined by the board.
- Addition of a reference to “Conflict of Interest, Disqualification and the Local Land Use Board Decision-Making Process,” NHMA Law Lecture #2, Fall 2010 at the beginning of the Disqualification section in Chapter III, page III-11.
- Replacement of the entire section about Recommendations on the Timing, the Writing of the Decision, and Vote in Chapter III, page III-15.
- Addition of a new paragraph to the Decisions section of Chapter III on page III-16 that written reasons should also be provided in the case of an approval.
- Addition of a reference to “Administrative Decisions in Planning and Zoning: How They’re Made, How They’re Appealed,” NHMA Law Lecture #3, Fall 2010 in the Appeal of Administrative Decision section of Chapter II, page II-3.
- Addition of a reference to “Conflict of Interest, Disqualification and the Local Land Use Board Decision-making Process,” NHMA Law Lecture # 2, Fall 2010 at the beginning of the Decision section in Chapter III, page III-14.

December 2011

The following changes were incorporated in December 2011 during the annual revision of the handbook.

- Added the fourth paragraph to the Caution page.
- Amended the section regarding unactivated alternates participating in deliberations on page I-4.
- Added a section regarding standing to Appeal from Administrative Decision in Chapter II on page II-4.
- Added a section about the board acting as the Building Code Board of Appeals in Chapter II on page II-22.
- Added a reference to *Atwater v. Plainfield* in the Application section of Chapter III on page III-2 and a summary of the case in Appendix D on page D-45.
- Added a notation regarding the time frame for holding a rehearing on page IV-3 and added a new section in the Application/Decision section of the Rules of Procedure on page A-5.
- Removed the reference to unactivated alternate members not being able to participate in deliberations in the Members and Alternates section of the Suggested Rules of Procedure on page A-2.
- Added a section in the Rules of Procedure about how alternates are selected to be activated on page A-2.
- Revised the Rules of Procedure amendment procedure on page A-5.
- Added *Goldstein v. Town of Bedford*, (November 22, 2006) and *Golf Course Investors of NH, LLC v. Jaffrey* (April 12, 2011) to the list of cases in Appendix D on pages D-34 and D-46 respectively.

October 2012

The following changes were incorporated in October 2012 during the annual revision of the handbook.

- Amended the multiple membership section relative to RSA 673:7 on page I-3.
- Added a paragraph about unactivated alternates participating in deliberations and our recommendation that the rules be amended to clarify the level of participation allowed on page I-4 and in the Members and Alternates section of the Suggested Rules of Procedure on page A-1.
- Added a box referencing *Harborside Associates, LP v. Parade Residence Hotel, LLC*, 162, N.H. 508 (2011) and the supreme court’s interpretation of the “public interest” and “spirit of the ordinance” variance criteria on page II-11.
- Added text referencing *Malachy Glen Assoc. v. Chichester*, 155 N.H. 102 (2007) and the “substantial justice” variance criteria on page II-11.

- Added text referencing *Harborside Associates, LP v. Parade Residence Hotel, LLC* 162, N.H. 508 (2011) and the supreme court’s interpretation of the “hardship” variance criteria on page II-14.
- Added RSA 673:3, IV to The ZBA Acting as the Building Code Board of Appeals under Additional Responsibilities in Chapter II on page II-24.
- Added a new section, What The Board Should Not Do, in Chapter II, page II-29.
- Added a reference to 676:3, III requiring conditions of approval to be included in the written decision and on or with any plat record to memorialize an approval on page III-17.
- Added a paragraph about holding the rehearing within 30 days of the decision on page IV-3 and in the Application/Decision section of the Rules of Procedure on page A-5.
- Added a paragraph regarding the attendance at a rehearing by the petitioner with reference to RSA 673:15, the power to compel witnesses by the ZBA chair on page IV-3.
- Added a summary of *Harborside Associates, LP v. Parade Residence Hotel, LLC*, 162, N.H. 508 (2011) in Appendix D on page D-47.

November 2013

The following changes were incorporated in November 2013 during the annual revision of the handbook.

- Added Emerald Lake Village District to the list of village districts with zoning ordinances on page ix.
- Added a reference to the new Integrated Land Development Permit process by the Department of Environmental Services and that a municipality may adopt an innovative land use control allowing a project that does not fully conform to the zoning ordinance as long as the planning board makes certain findings on page III-17.
- Added a reference to the addition of section VI of RSA 674:33 prohibiting the ZBA from requiring submission of an application for or receipt of a permit or permits from other state or federal governmental bodies prior to accepting a submission for its review or rendering its decision on page III-2 and including the new statute text on page II-5.
- Added references to Ch. Law 267:9 (2013) amending RSA 674:33 explicitly stating that neither a special exception nor a variance shall be required for a collocation or a modification of a personal wireless service facility, as defined in RSA 12-K:2 on page II-4 and II-7.
- Added a reference to the amendment to RSA 674:33 adding a new section I-a setting forth a minimum 2 year window within which a variance remains valid on page II-8 and showing the addition to RSA 674:33 on page II-7; added a reference in the Attaching Conditions and Time Limits section on page III-15.
- Added a reference to the amendment to RSA 674:33, IV setting forth a minimum 2 year window within which a special exception remains valid on page II-5 and showing the amendment to RSA 674:33 on page II-5; added a reference in the Attaching Conditions and Time Limits section on page III-15.
- Added further clarification on the difference between a special exception and a variance including a reference to *1808 Corporation v. Town of New Ipswich*, 161 N.H. 772 (April 26, 2011) (an applicant may ask for a variance from one or more of the special exception requirements) on page II-5.
- Added additional clarification about the variance hardship criteria in the Variance section of Chapter II on page II-14.
- Added an excerpt from an article in *New Hampshire Town and City* about motions and decisions in the Decision section on page III-13.
- Added an excerpt from an article in *New Hampshire Town and City* about attaching conditions in the Attaching Conditions and Time Limits section on page III-16.
- Added an excerpt from an article in *New Hampshire Town and City* about precedent and subsequent conditions in the Attaching Conditions and Time Limits section on page III-17.
- Added a reference to *Steve Trefethen & a. v. Town of Derry* (2013) and RSA 21:35, II that if a filing deadline falls on a weekend or legal holiday, the action shall be deemed timely filed if done so on the next business day on page IV-2.
- Added a new section titled Appeals of Planning Board Decisions to Chapter IV containing the changes to RSA 677:15 on page IV-6.
- Retitled *Worksheet: Statement of Reasons - Variance to Individual Board Member Variance Worksheet* and revised its explanatory opening paragraph in Appendix C on page C-10.
- Summary of *1808 Corporation v. Town of New Ipswich*, 161 N.H. 772 (April 26, 2011) on page D-43.
- Summary of *Steve Trefethen & a. v. Town of Derry*, Submitted: February 7, 2013 Opinion Issued: April 12, 2013 on page D-45.

- Added a section about the adoption of forms in Appendix A, Suggested Rules of Procedure on page A-3.

November 2014

- Added RSA 500-A:12, Examination to the Disqualification section of Chapter III on page III-11.
- Deleted the sentence “The zoning ordinance may contain a provision that a special exception must be acted upon within a certain time period, such as six months to one year, or the approval will be lost.” following the reference to *Geiss* on page III-18 pursuant to SB50 (2013).
- Added a notation that the implementation date for the Integrated Land Development Permit was changed in 2014 from January 1, 2015 to July 1, 2017 on page III-20.
- Added a quotation from *Merriam v. Town of Salem*, 112 N.H. 267, 268 (1972) in the Appeal to Superior Court section of Chapter IV relative to inquiries into the mental processes by which decisions were reached on page IV-6.
- Added RSA 489 Integrated Land Development Permit, and RSA 500-A:12 Examination, to the list of statutes in Appendix F.

November 2015

- Added a reference to *Accurate Transport, Inc. v. Town of Derry* in the Appeal from Administrative Decision section of Chapter II on page II-4.
- Added a reference to *Stephen Bartlett & a. v. City of Manchester* regarding the need to consider nonconforming issues first in the Variance section of Chapter II on page II-8.
- Added a reference to the Fall 2015 Law Lecture by Bernie Waugh about Grandfathering and Nonconforming Uses and updated the references to previous lectures in the Expansion of Nonconforming Uses section of Chapter II on page II-19.
- Added the fourth “pathway” to the ZBA to consider the question of expansion or changes to a nonconforming use in the Expansion of Nonconforming Uses section of Chapter II on page II-20.
- Added the fourth “test” from *New London Land Use Assoc. v. New London Zoning Board* in the Expansion of Nonconforming Uses section of Chapter II on page II-21.
- Added the Zoning Ordinances “Use It or Lose It” Clauses section from the Fall 2015 Law Lecture by Bernie Waugh about Grandfathering and Nonconforming Uses section of Chapter II on page II-23.
- Updated the text of RSA 674:34, RSA 155-A:1, and RSA 155-A:7 to be current because these were overlooked in previous editions on page II-25.
- Added a reference to the 2015 Law Lecture #3 – Implementing & Enforcing the State Building Code & the State Fire Code and deleted the section titled Relationship Between Building Codes and the State Fire Code in the ZBA Acting as the Building Code Board of Appeals section of Chapter II on page II-26.
- Added a description of the ZBA’s role in the restoration of involuntary mergers to the Other Responsibilities section of Chapter II on page II-28.
- Added a description of the ZBA’s role in waivers for agricultural uses of land to the Other Responsibilities section of Chapter II on page II-28.
- Added a reference to *Accurate Transport, Inc. v. Town of Derry* in the Application section of Chapter III on page III-2.
- Added a reference to *Bartlett v. Manchester* in the Application section of Chapter III on page III-3.
- Added a new text box referencing *Atherton v. Concord*; added new text suggesting recused members leave the room , added a second new text box outlining suggested recusal practice in the Disqualification section of Chapter III on pages III-11 and III-12.
- Revised the text in the opening paragraph of the Findings of Facts section of Chapter III on page III-13.
- Added a reference to *Daryl Dembiec & a. v. Town of Holderness* in the Rehearing section of Chapter IV on page IV-5.
- Added text regarding threshold questions for determining disqualification in the Disqualification section of the Meetings section in the Suggested Rules of Procedure (Appendix A) on page A-2.
- Added reference to the new 2 year time frame for ZBA decisions in the Notice of Decision – Granted form in Appendix C on page C-12.
- Added a summary of *Stephen Bartlett & a. v. City of Manchester* in Zoning Board of Adjustment Case Law (Appendix D) beginning on page D-43.
- Added summaries of *Daryl Dembiec & a. v. Town of Holderness* and *Accurate Transport, Inc. v. Town of Derry* in Zoning Board of Adjustment Case Law (Appendix D) beginning on page D-45.

November 2016

- Updated the list of New Hampshire Village Districts With Zoning Ordinances on page ix.
- Added a section titled Variances from the Terms of a Special Exception on pages II-7 and II-8.
- Added text to the section titled Subsequent Applications and changed the title name to Previous Applications on page III-4.
- Added a paragraph regarding recording and videotaping public hearings on page III-8.
- Added a hyperlink to the OEP website and inserted text on variances and RSA 674:33 on pages III-14 and III-15.
- Added a section titled Special Considerations when Voting on a Variance on page III-18.
- Added text in the Executive Session and changed the title to Nonpublic Sessions on page III-23.
- Added a paragraph (2 e.) in the Meetings section of Appendix A regarding postponements on page A-2.
- Revised the Public Notice text in Appendix A on page A-3.

INTRODUCTION

For many years, zoning boards of adjustment have played an important, but little noticed role in the development of New Hampshire communities. Sometimes praised, sometimes criticized, they have continued to perform their principal role - reviewing applications for zoning variances, special exceptions, equitable waivers of dimensional requirements, and hearing appeals from the decisions made by administrative officials - all without much fanfare. To a large extent, the success or failure of zoning administration rests on the proper exercise of judgment by members of the board of adjustment, and the job is not an easy one.

The first rudimentary land use controls date back at least several thousand years, but the modern concept of zoning began early in the twentieth century. As our nation and its cities grew in size and complexity, it became apparent that haphazard growth and mixing of industry, commerce, and housing were resulting in a loss of land values. Several major cities began experimenting with ordinances that restricted the use of land by districts or zones; other cities were quick to follow. More recently, smaller cities and towns have enacted zoning ordinances and maps, recognizing that their health, safety and welfare depend on protection against ill-considered and indiscriminate use of land.

When New York City enacted the first comprehensive zoning ordinance and map in 1916, unusual features of the topography, odd shaped lots, and drainage conditions required that some flexibility be provided to ensure proper use and enjoyment of the property and to avoid charges of confiscation that could result from strict application of the ordinance. As states passed enabling legislation granting communities authority to zone, they also required that the local ordinance provide for a board of adjustment with defined powers and duties.

Because this legislation presented new concepts, questions of constitutionality were raised. The United States Supreme Court ruled that enactment and enforcement of zoning laws was a proper application of the police powers that reside in the individual states. Because municipalities are created by the state, the cities and towns have power to act only in accordance with state-permitting legislation.

For this reason, the powers granted to a zoning board of adjustment must be consistent with enabling legislation. The New Hampshire Supreme Court has stated: *“The board of adjustment is an essential cog in the entire scheme of a zoning ordinance, and that lacking it, the ordinance before us is invalid as a zoning ordinance.”* (*Jaffrey v. Heffernan* 104 N.H. 249 [1962])

New Hampshire’s planning-enabling legislation, Revised Statutes Annotated (RSA) 672-678, and the local zoning ordinance and map, provide the legal basis for the board of adjustment’s work. Each board member should be completely familiar with them. While zoning ordinances can and should be tailored to the particular community, there is one thing they all require – the creation of a zoning board of adjustment. It has been said that the only reason zoning, as a comprehensive land use planning technique, has been upheld as constitutional in the courts is due to the existence of the ZBA as a “constitutional safety valve.” The ZBA provides the necessary flexibility to ensure that the ordinance was applied equitably to all property.

In addition to statutory law, there is also “case law” which is the interpretation courts have given to various statutes and ordinances when applied to specific cases. Case law further clarifies the provision contained in both state and local regulations.

Since zoning, as applied today, is relatively new and innovative, ideas are continually coming into use; case law has not resolved all points of contention. Hard and fast rules that cover all situations are difficult to state but broad principles can be presented.

This handbook is an administrative tool to acquaint board members and other interested persons with a discussion of the basic responsibilities of the board of adjustment and to suggest procedures by which the work of the board can be carried out in a fair and effective manner.

It is hoped that planning boards, which have the task of formulating the zoning ordinance and zoning map, will also find the handbook useful. The board of adjustment cannot carry out its duties if it must work with a zoning ordinance and map that is poorly prepared, contains questionable provisions, or fails to carry out its purpose in an explicit manner. A good zoning ordinance is an essential base for good zoning administration.