

CITIZEN HAS NO STANDING TO SEEK COURT ENFORCEMENT OF ZONING ORDINANCE

[Goldstein v. Town of Bedford](#), (November 22, 2006)

Mr. Goldstein was upset (and probably still is) because he believed that a Mr. Evans had violated the town's zoning ordinance governing the merger of two nonconforming lots. The town's zoning administrator looked into the matter, contacted the town's legal counsel, and decided not to pursue an enforcement action.

Mr. Goldstein filed an appeal with the ZBA challenging the decision of the zoning administrator. At the public hearing, Mr. Goldstein acknowledged that he had no interest in the zoning enforcement matter different from any other citizen in the town and that he was "just a Bedford resident who would like to see the zoning ordinance enforced."

Even before he got to the ZBA, Mr. Goldstein filed a petition in the superior court seeking a Writ of Mandamus against the town (such a Writ is simply an order of the court that orders the town officials to carry out a mandatory duty that is imposed upon them by law, thus mandamus). The town filed a motion to dismiss the case, claiming that Mr. Goldstein had no standing to seek such relief from the court.

The superior court granted the motion to dismiss, and the NH Supreme Court agreed. The court reasoned that if Mr. Goldstein didn't have the right to appeal the ZBA decision to the courts, he also would lack the right to seek a Writ of Mandamus, so the court first considered whether he had standing under the statutes to appeal from the ZBA. The court explained its reasoning as follows:

Pursuant to RSA 676:5, I, "any person aggrieved" by any decision of an administrative officer may appeal to the ZBA. "[T]he selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing" within thirty days after a decision of the ZBA. RSA 677:2. An appeal from the ZBA's decision on the motion for rehearing may then be brought in the superior court within thirty days by "[a]ny person aggrieved" by the order or decision of the ZBA. RSA 677:4 (Supp. 2006). The same statute defines "person aggrieved" as "any party entitled to request a rehearing under RSA 677:2." To demonstrate that he is a "person aggrieved," the plaintiff must show some "direct definite interest in the outcome of the proceedings." *Caspersen v. Town of Lyme*, 139 N.H. 637, 640 (1995). "[S]tanding will not be extended to all persons in the community who might feel that they are hurt by" a local administrator's decision. *Nautilus of Exeter v. Town of Exeter*, 139 N.H. 450, 452 (1995) (quotation and ellipsis omitted). "Whether a party has a sufficient interest in the outcome of a planning board or zoning board proceeding to have standing is a factual determination in each case." *Weeks Restaurant Corp. v. City of Dover*, 119 N.H. 541, 544-45 (1979). The pertinent statutes plainly limit standing to appeal a decision of an administrative official concerning enforcement of a zoning ordinance either to the ZBA (RSA 676:5) or to the superior court (RSA 677:4) to

"persons aggrieved." At oral argument, the plaintiff conceded that under the Nautilus decision, he did not qualify as an aggrieved person under the statutory scheme. He argues, however, that he has standing as a town resident and taxpayer to seek mandamus relief to require the town to enforce its zoning ordinance. We disagree.

The court went on to find that because Mr. Goldstein was not a "person aggrieved" under the statutes, he lacks standing to appeal to the ZBA, and he therefore also lacks standing to bring a mandamus action in the superior court. To hold otherwise would allow him to circumvent the clear intent of the legislature to limit standing for zoning appeals to persons aggrieved.