

CHAPTER 12-K
DEPLOYMENT OF PERSONAL WIRELESS SERVICE FACILITIES

Section 12-K:1. 12-K:2. 12-K:3. 12-K:4. 12-K:5. 12-K:6.	Goals; Purpose. Definitions. Wireless Carriers Doing Business in this State. Payment of Costs. Fall Zones. Personal Wireless Services Facilities Map.	Section 12-K:7. 12-K:8. 12-K:9. 12-K:10. 12-K:11.	Regional Notification. Model Ordinances and Guidance. Rulemaking. Application Review. Limitations on Applications.
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Redesignation of chapter; revision of internal references.

RSA 12-K was originally enacted as RSA 12-J by 2000, 240:1, but was redesignated, pursuant to 2000,

240:7, in light of the enactment of RSA 12-J by 2000, 204:2. All internal references to RSA 12-J appearing in this chapter have been revised to refer to RSA 12-K pursuant to 2000, 240:7.

12-K:1. Goals; Purpose.

I. The federal Telecommunications Act of 1996 regulates the deployment of wireless services in the United States. Its purpose is to make these services available to the American people quickly and in a very competitive manner. Nothing in this chapter is intended to preempt the federal Telecommunications Act of 1996.

II. The visual effects of tall antenna mounts or towers may go well beyond the physical borders between municipalities, and should be addressed so as to require that all affected parties have the opportunity to be heard.

III. Carriers wishing to build personal wireless service facilities (PWSFs) in New Hampshire should consider commercially available alternative PWSFs to tall cellular towers, which may include the use of the following:

- (a) Lower antenna mounts which do not protrude as far above the surrounding tree canopies.
- (b) Disguised PWSFs such as flagpoles, artificial tree poles, light poles, and traffic lights, which blend in with their surroundings.
- (c) Camouflaged PWSFs mounted on existing structures and buildings.
- (d) Custom designed PWSFs to minimize the visual impact of a PWSF on its surroundings.
- (e) Other available technology.

IV. A PWSF map is necessary to allow for the orderly and efficient deployment of wireless communication services in New Hampshire, and so that local communities have adequate information with which to consider appropriate siting and options to mitigate the visual effects of PWSFs.

V. Municipalities will benefit from state guidance regarding provisions to be considered in zoning ordinances relative to the deployment of wireless communications facilities, including one or more model ordinances.

V-a. It is the policy of this state to facilitate the provision of broadband and other advanced personal wireless services across the state; and to promote access to broadband and advanced personal wireless services for all residents, students, government agencies, and businesses to ensure the availability of educational opportunities, economic development, and public safety services throughout New Hampshire. Deployment of personal wireless service facilities infrastructure is also critical to ensuring that first responders can provide for the health and safety of all residents of New Hampshire. Consistent with the federal Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, section 6409, which creates a national wireless emergency communications network for use by first responders that will be dependent on facilities placed on existing antenna mounts or towers, it is the policy of this state to facilitate the collocation of personal wireless services facilities on existing

antenna mounts or towers in all areas of New Hampshire, while also allowing for expeditious modification of existing personal wireless service facilities to keep pace with technological improvements.

VI. Except as provided in RSA 12-K:10 and RSA 12-K:11, nothing in this chapter shall be construed as altering any municipal zoning ordinance, and this chapter itself shall not be construed as a zoning ordinance.

Source.

2000, 240:1, eff. Aug. 7, 2000. 2013, 267:1, 2, eff. September 22, 2013.

References in text.

The Telecommunication Act of 1996, referred to in par. I, is classified as 47 U.S.C.S. §§ 151 et seq.

Amendments

—2013. The 2013 amendment added V-a and added "Except as provided in RSA 12-K:10 and RSA 12-K:11" in VI.

Severability of 2013 amendment.

2013, 267:12, eff. September 22, 2013, provided: "If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable."

12-K:2. Definitions.

In this chapter:

I. "Accessory equipment" means any equipment serving or being used in conjunction with a PWSF or mount. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or similar structures.

II. "Antenna" means the equipment from which wireless radio signals are sent and received by a PWSF.

III. "Applicant" means a carrier or any person engaged in the business of providing the infrastructure required for a PWSF who submits a collocation application or a modification application.

IV. "Authority" means each state, county, and each governing body, board, agency, office, or commission of a municipality authorized by law to make legislative, quasi judicial, or administrative decisions relative to the construction, installation, modification, or siting of PWSFs and mounts. The term shall not include state courts having jurisdiction over land use, planning, or zoning decisions made by an authority.

V. "Average tree canopy height" means the average height found by inventorying the height above ground level of all trees over a specified height within a specified radius.

VI. "Base station" means a station at the base of a mount or in the area near the PWSF that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

VII. "Building permit" means a permit issued pursuant to RSA 676 by an authority prior to the collocation or modification of PWSFs, solely to ensure that the work to be performed by the applicant satisfies the applicable building code.

VIII. "Camouflaged" means for a personal wireless service facility one that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

IX. "Carrier" means a person that provides personal wireless services.

X. "Collocation" means the placement or installation of new PWSFs on existing towers or mounts, including electrical transmission towers and water towers, as well as existing buildings and other structures capable of structurally supporting the attachment of PWSFs in compliance with applicable codes. "Collocation" does not include a "substantial modification."

XI. "Collocation application" shall mean a request submitted by an applicant to an authority for collocation on a tower or mount.

XII. "Director" means the director of the office of energy and planning.

XIII. "Disguised" means, for a PWSF, designed to look like a structure which may commonly be found in the area surrounding a proposed PWSF such as, but not limited to, flagpoles, light poles, traffic lights, or artificial tree poles.

XIV. "Electrical transmission tower" means an electrical transmission structure used to support high voltage overhead power lines. The term shall not include any utility pole.

XV. "Equipment compound" means an area surrounding or near the base of a tower or mount supporting a PWSF, and encompassing all equipment shelters, cabinets, generators, and appurtenances primarily associated with the PWSF.

XVI. "Equipment shelter" means an enclosed structure, cabinet, shed vault, or box near the base of a mount within which are housed equipment for PWSFs, such as batteries and electrical equipment.

XVII. "Height" means the height above ground level from the natural grade of a site to the highest point of a structure.

XVIII. "Modification" means the replacement or alteration of an existing PWSF within a previously approved equipment compound or upon a previously approved mount. Routine maintenance of an approved PWSF shall not be considered a modification.

XIX. "Modification application" means a request submitted by an applicant to an authority for modification of a PWSF.

XX. "Mount" means the structure or surface upon which antennas are mounted and includes roof-mounted, side-mounted, ground-mounted, and structure-mounted antennas on an existing building, as well as an electrical transmission tower and water tower, and excluding utility poles.

XXI. "Municipality" means any city, town, unincorporated town, or unorganized place within the state.

XXII. "Personal wireless service facility" or "PWSF" or "facility" means any "PWSF" as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(C)(ii), including facilities used or to be used by a licensed provider of personal wireless services. A PWSF includes the set of equipment and network components, exclusive of the underlying tower or mount, including, but not limited to, antennas, accessory equipment, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide personal wireless services.

XXIII. "Radio frequency emissions" means the emissions from personal wireless service facilities, as described in the federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(B)(iv).

XXIV. "Tower" shall mean a freestanding or guyed structure, such as a monopole, monopine, or lattice tower, designed to support PWSFs.

XXV. "Substantial modification" means the mounting of a proposed PWSF on a tower or mount which, as a result of single or successive modification applications:

(a) Increases or results in the increase of the permitted vertical height of a tower, or the existing vertical height of a mount, by either more than 10 percent or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or

(b) Involves adding an appurtenance to the body of a tower or mount that protrudes horizontally from the edge of the tower or mount more than 20 feet, or more than the width of the tower or mount at the level of the appurtenance, whichever is greater, except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower or mount via cable; or

(c) Increases or results in the increase of the permitted square footage of the existing equipment compound by more than 2,500 square feet; or

(d) Adds to or modifies a camouflaged PWSF in a way that would defeat the effect of the camouflage.

XXVI. "Utility pole" means a structure owned and/or operated by a public utility, municipality, electric membership corporation, or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephony, cable television, or electricity, or to provide lighting.

XXVII. "Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

Source.

2000, 240:1, eff. Aug. 7, 2000. 2003, 319:9, eff. July 1, 2003. 2004, 257:44, eff. July 1, 2004. 2013, 267:3, eff. September 22, 2013.

Amendments

—2013. The 2013 amendment rewrote the section to the extent that a detailed comparison would be impracticable.

—2004. Paragraph V: Substituted “office of energy and planning” for “office of state planning and energy programs”.

—2003. Paragraph V: Substituted “office of state planning and energy programs” for “office of state planning”.

Severability of 2013 amendment.

2013, 267:12, eff. September 22, 2013, provided: “If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.”

12-K:3. Wireless Carriers Doing Business in this State.

Each carrier or its appointed agent doing business, or seeking to do business, in this state shall:

I. Be allowed to construct new towers, provided that these towers comply with municipal regulations for maximum height or maximum allowed height above the average tree canopy height, subject to any exceptions, waivers, or variances allowed or granted by the municipality.

II. Comply with all applicable state and municipal land use regulations laws.

III. Comply with all federal, state, and municipal statutes, rules, and regulations, including federal radio frequency radiation emission regulations and the National Environmental Policy Act of 1969, as amended.

IV. Provide information at the time of application to construct an externally visible tower or to make a substantial modification to an existing tower, mount, or PWSF, or prior to construction if no approval is required, to the municipality in which the tower, mount, or PWSF is to be constructed and to the office of energy and planning as follows:

(a) A copy of its license from the Federal Communications Commission (FCC) demonstrating its authority to provide personal wireless services in the geographical area where the PWSF is located, or where a person is seeking to construct a new tower or make a substantial modification to a tower, mount, or PWSF on behalf of a carrier, a signed authorization from a representative of the carrier, and a copy of the carrier’s license.

(b) Upon request, maps showing all of the carrier’s current externally visible tower and monopole PWSF locations in the state within a 20-mile radius of the proposed externally visible new ground-mounted PWSF, including permanent, temporary or to-be-decommissioned sites, if any.

(c) Upon request, a description of why less visually intrusive alternatives for this tower or mount were not proposed.

Source.

2000, 240:1, eff. Aug. 7, 2000. 2003, 319:9, eff. July 1, 2003. 2004, 257:44, eff. July 1, 2004. 2013, 267:4, eff. September 22, 2013.

References in text.

The National Environmental Policy Act of 1969, referred to in par. III, is classified as 42 U.S.C.S. §§ 4321 et seq.

The Telecommunication Act of 1996, referred to in par. IV(a), is classified as 47 U.S.C.S. §§ 151 et seq.

Amendments

—2013. The 2013 amendment rewrote the section to the extent that a detailed comparison would be impracticable.

—2004. Paragraph IV: Substituted “office of energy and planning” for “office of state planning and energy programs” in the introductory paragraph.

—2003. Paragraph IV: Substituted “office of state planning and energy programs” for “office of state planning”.

Severability of 2013 amendment.

2013, 267:12, eff. September 22, 2013, provided: “If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.”

12-K:4. Payment of Costs.

A wireless carrier seeking approval to deploy a wireless communication facility may be required to pay reasonable fees, including regional notification costs, imposed by the municipality in accordance with RSA 676:4, l(g).

Source.

2000, 240:1, eff. Aug. 7, 2000.

12-K:5. Fall Zones.

Zoning ordinances may include provisions for fall zones for new towers and substantial modifications to the extent necessary to protect public safety.

Source.

2000, 240:1, eff. Aug. 7, 2000. 2013, 267:5, eff. September 22, 2013.

Amendments

—2013. The 2013 amendment rewrote the section to the extent that a detailed comparison would be impracticable.

any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable."

Severability of 2013 amendment.

2013, 267:12, eff. September 22, 2013, provided: "If

12-K:6. Personal Wireless Services Facilities Map.

The director of the office of energy and planning shall develop a personal wireless service facilities map for the state. This map shall include all externally visible tower and monopole PWSF locations in the state, both active and inactive, for all carriers. This map shall also include for each of the above locations a site description. Upon request of the director, any wireless carrier or its appointed agent doing business in this state shall provide a map of all of its existing externally visible tower and monopole PWSF locations in the state and a site description of each.

Source.

2000, 240:1, eff. Aug. 7, 2000. 2003, 319:9, eff. July 1, 2003. 2004, 257:44, eff. July 1, 2004. 2013, 267:6, eff. September 22, 2013.

Amendments

—2013. The 2013 amendment deleted "as described in RSA 12-K:3, IV(c)" at the end of the last two sentences.

—2004. Substituted "office of energy and planning" for "office of state planning and energy programs" in the first sentence.

—2003. Substituted "office of state planning and energy programs" for "office of state planning" in the first sentence.

Severability of 2013 amendment.

2013, 267:12, eff. September 22, 2013, provided: "If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable."

12-K:7. Regional Notification.

I. (a) Any municipality or other authority which receives an application to construct a new tower or to complete a substantial modification to an existing tower or mount which will be visible from any other New Hampshire municipality within a 20-mile radius shall provide written notification of such application and pending action to such other municipality within the 20-mile radius.

(b) This notification shall include sending a letter to the governing body of the municipality within the 20-mile radius detailing the pending action on the application and shall also include publishing a notice in a newspaper customarily used for legal notices by such municipality within the 20-mile radius, presenting a synopsis of the application, providing relevant information concerning the applicable permits required and the date of

the next public hearing on the application. **Where a public hearing is scheduled by the local governing body**, such notice shall be published not less than 7 days nor more than 21 days prior to the public hearing date.

II. (a) Any person, prior to constructing a new tower in any location where no approval is required but which will be visible from any other New Hampshire municipality within a 20-mile radius, shall provide written notification of such planned construction to such other municipality within the 20-mile radius.

(b) This notification shall include sending a letter to the governing body of the municipality within the 20-mile radius detailing the planned construction and shall also include publishing a notice in a newspaper customarily used for legal notices by such municipality within a 20-mile radius, presenting a synopsis of the planned construction.

III. Municipalities within the 20 mile radius described in paragraphs I or II and their residents shall be allowed to comment at any public hearing related to the application. Regional notification and comments from other municipalities or their residents shall not be construed to imply legal standing to challenge any decision.

Source.

2000, 240:1, eff. Aug. 7, 2000. 2013, 267:7, eff. September 22, 2013.

governing body" in the second sentence; substituted "tower" for "PWSF" in II(a); and substituted "presenting a synopsis of" for "outlining" in II(b).

Amendments

—2013. The 2013 amendment, in I(a), substituted "other authority" for "state authority or agency" and "new tower or to complete a substantial modification to an existing tower or mount" for "PWSF"; in I(b), in the first sentence, substituted "presenting a synopsis of" for "stating the specifics of" and "providing relevant information concerning the applicable permits required and" for "the pending action, and" and added "Where a public hearing is scheduled by the local

Severability of 2013 amendment.

2013, 267:12, eff. September 22, 2013, provided: "If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable."

12-K:8. Model Ordinances and Guidance.

The director of the office of energy and planning shall develop a set of model municipal ordinances relative to the deployment of personal wireless communications facilities. Prior to development, the director shall hold one or more public hearings and solicit comments from interested parties. The office of energy and planning shall provide a copy of the set of model ordinances to any New Hampshire municipality that requests it.

Source.

2000, 240:1, eff. Aug. 7, 2000. 2003, 319:9, eff. July 1, 2003. 2004, 257:44, eff. July 1, 2004.

—2003. Substituted "office of state planning and energy programs" for "office of state planning".

Amendments

—2004. Substituted "office of energy and planning" for "office of state planning and energy programs" in the first and third sentences.

12-K:9. Rulemaking.

The director of the office of energy and planning, after holding a public hearing, shall adopt rules under RSA 541-A to provide sufficient information to municipalities, other state agencies, wireless companies doing business or seeking to do business in this state, and the public.

Source.

2000, 240:1, eff. Aug. 7, 2000. 2003, 319:9, eff. July 1, 2003. 2004, 257:44, eff. July 1, 2004. 2012, 171:3, eff. August 10, 2012.

Amendments

—2012. The 2012 amendment deleted "as necessary to implement this act and" following "under RSA 541-A."

–2004. Substituted “office of energy and planning” for “office of state planning and energy programs”.

–2003. Substituted “office of state planning and energy programs” for “office of state planning”.

12-K:10. Application Review.

Notwithstanding any ordinance, bylaw, or regulation to the contrary, in order to ensure uniformity across New Hampshire with respect to the process for reviewing a collocation application and a modification application, each authority shall follow the following process:

I. Collocation applications and modification applications shall be reviewed for conformance with applicable building permit requirements but shall not otherwise be subject to zoning or land use requirements, including design or placement requirements, or public hearing review.

II. The authority, within 45 calendar days of receiving a collocation application or modification application, shall:

(a) Review the collocation application or modification application in light of its conformity with applicable building permit requirements and consistency with this chapter. A collocation application or modification application is deemed to be complete unless the authority notifies the applicant in writing, within 15 calendar days of submission of the specific deficiencies in the collocation application or modification application which, if cured, would make the collocation application or modification application complete. Upon receipt of a timely written notice that a collocation application or modification application is deficient, an applicant shall have 15 calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within 15 calendar days, the collocation application or modification application shall be reviewed and processed within 45 calendar days from the initial date received by the authority. If the applicant requires more than 15 calendar days to cure the specific deficiencies, the 45 calendar days deadline for review shall be extended by the same period of time;

(b) Make its final decision to approve or disapprove the collocation application or modification application; and

(c) Advise the applicant in writing of its final decision.

III. If the authority fails to act on a collocation application or modification application within the 45 calendar days review period, the collocation application or modification application shall be deemed approved.

IV. Notwithstanding anything to the contrary in this chapter, an authority may not mandate, require or regulate the installation, location, or use of PWSFs on utility poles.

V. A party aggrieved by the final action of an authority, either by an affirmative denial of a collocation application or modification application under paragraph II or by its inaction, may bring an action for review in superior court for the county in which the PWSF is situated.

Source.

2013, 267:8, eff. September 22, 2013.

Severability of enactment.

2013, 267:12, eff. September 22, 2013, provided: “If any provision of this chapter or the application thereof

to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.”

12-K:11. Limitations on Applications.

I. In order to ensure uniformity across New Hampshire with respect to the consideration of every collocation application and modification application, no authority may:

(a) Require an applicant to submit information about, or evaluate an applicant's business decisions with respect to, its designed service, customer demand for service, or quality of its service to or from a particular area or site.

(b) Evaluate a collocation application or modification application based on the availability of other potential locations for the placement of towers, mounts, or PWSFs.

(c) Decide which type of personal wireless services, infrastructure, or technology shall be used by the applicant.

(d) Require the removal of existing mounts, towers, or PWSFs, wherever located, as a condition to approval of a collocation application or modification application.

(e) Impose environmental testing, sampling, or monitoring requirements or other compliance measures for radio frequency emissions on PWSFs that are categorically excluded under the FCC's rules for radio frequency emissions pursuant to 47 C.F.R. section 1.1307(b)(1).

(f) Establish or enforce regulations or procedures for radio frequency signal strength or the adequacy of service quality.

(g) In conformance with 47 U.S.C. section 332(c)(7)(B)(iv), reject a collocation application or modification application, in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions.

(h) Impose any restrictions with respect to objects in navigable airspace that are greater than or in conflict with the restrictions imposed by the Federal Aviation Administration.

(i) Prohibit the placement of emergency power systems that comply with federal and New Hampshire environmental requirements.

(j) Charge an application fee, consulting fee or other fee associated with the submission, review, processing, and approval of a collocation application or modification application that is not required for similar types of commercial development within the authority's jurisdiction. Fees imposed by an authority or by a third-party entity providing review or technical consultation to the authority must be based on actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of a collocation application or modification application. Notwithstanding the foregoing, in no event shall an authority or any third-party entity include within its charges any travel expenses incurred in a third-party's review of a collocation application or modification application, and in no event shall an applicant be required to pay or reimburse an authority for consultant or other third-party fees based on a contingency or result-based arrangement.

(k) Impose surety requirements, including bonds, escrow deposits, letters of credit, or any other type of financial surety, to ensure that abandoned or unused facilities can be removed unless the authority imposes similar requirements on other permits for other types of commercial development or land uses. If surety requirements are imposed, they shall be competitively neutral, non-discriminatory, reasonable in amount, and commensurate with the historical record for local facilities and structures that are abandoned.

(l) Condition the approval of a collocation application or modification application on the applicant's agreement to provide space on or near any tower or mount for the authority or local governmental services at less than the market rate for space or to provide other services via the structure or facilities at less than the market rate for such services.

(m) Limit the duration of the approval of a collocation application or modification application.

(n) Discriminate on the basis of the ownership, including by the authority, of any property, structure, or tower when evaluating collocation applications or modification applications.

II. Notwithstanding the limitations in paragraph I, nothing in this chapter shall be construed to:

(a) Limit or preempt the scope of an authority's review of zoning, land use, or permit applications for the siting of new towers or for substantial modifications to existing towers, mounts, or PWSFs.

(b) Prevent a municipality from exercising its general zoning and building code enforcement powers pursuant to RSA 672 through RSA 677 and as set forth in this chapter.

Source.

2013, 267:8, eff. September 22, 2013.

Severability of enactment.

2013, 267:12, eff. September 22, 2013, provided: "If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such

invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable."

Zoning Board of Adjustment and Building Code Board of Appeals

Cross References.

Appointment and terms of members, see RSA 673:3 et seq.
 Disqualification of members, see RSA 673:14.
 Establishment of boards, see RSA 673:1.
 Filling of vacancies, see RSA 673:12.
 Meetings, see RSA 673:10, 15, 17.
 Ordinance and code administration and enforcement generally, see RSA 676.

Ordinance and code adoption procedures generally, see RSA 675.
 Rehearing and appeals procedures generally, see RSA 677.
 Removal of members, see RSA 673:13.
 Staff, see RSA 673:16.
 Transfer of records of boards, see RSA 673:22.

674:33. Powers of Zoning Board of Adjustment.

I. The zoning board of adjustment shall have the power to:

(a) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and

(b) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

- (1) The variance will not be contrary to the public interest;
- (2) The spirit of the ordinance is observed;
- (3) Substantial justice is done;
- (4) The values of surrounding properties are not diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The definition of “unnecessary hardship” set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

I-a. Variances authorized under paragraph I shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.

II. In exercising its powers under paragraph I, the zoning board of adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

III. The concurring vote of 3 members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass.

IV. A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance. Special exceptions authorized under this paragraph shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause,

provided that no such special exception shall expire within 6 months after the resolution of a planning application filed in reliance upon the special exception.

V. Notwithstanding subparagraph I(b), any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:

(a) Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.

(b) In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.

VI. The zoning board of adjustment shall not require 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.

VII. 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.

Source.

1983, 447:1. 1985, 103:20. 1987, 256:1, eff. July 17, 1987. 1998, 218:1, eff. Aug. 17, 1998. 2009, 307:6, eff. January 1, 2010. 2013, 93:1, 2, eff. August 19, 2013; 267:9, 270:3, eff. September 22, 2013.

Amendments

—2013. The 2013 amendment by Chapter 93 added I-a and added the last sentence of IV.

The 2013 amendment by Chapter 267 added VII.

The 2013 amendment by Chapter 270 added VI.

—2009. The 2009 amendment rewrote I(b) to the extent that a detailed comparison would be impracticable.

—1998. Paragraph V: Added.

—1987. Paragraph I(a): Substituted “of” for “thereof or” following “enforcement” and “to RSA 674:16” for “thereto” following “pursuant” and inserted “zoning” preceding “ordinance”.

—1985. Paragraph III: Substituted “on” for “or” preceding “any”.

Contingent Renumbering.

2013, 267:13, eff. September 22, 2013, provided: “If SB 124-FN [ch. 270] of the 2013 regular legislative session becomes law, RSA 674:33, VI, as inserted by section 9 of this act, shall be renumbered as RSA 674:33, VII.” Pursuant to the terms of this provision, RSA 674:33, VI, as added by 2013, 267:9 was renumbered to RSA 674:33, VII.

Severability of 2013 amendment.

2013, 267:12, eff. September 22, 2013, provided: “If

any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.”

Applicability of 2009 amendment.

2009, 307:7, eff. January 1, 2010, provided: “Section 6 [which amended this section by rewriting I(b)] of this act shall apply to any application or appeal for a variance that is filed on or after the effective date of this act.”

Statement of Intent.

2009, 307:5, eff. January 1, 2010, provided: “The intent of section 6 [which amended this section by rewriting I(b)] of this act is to eliminate the separate “unnecessary hardship” standard for “area” variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the Simplex decision, as exemplified by cases such as *Governor’s Island Club, Inc. v. Town of Gilford*, 124 N.H. 126 (1983).”

NOTES TO DECISIONS

Analysis

I. Generally

1. Constitutional law
2. Legislative intent
3. Jurisdiction of board of adjustment
4. Rules governing board of adjustment

5. Failure to exhaust administrative remedy

II. Variances

10. Nature of variances
11. Purposes of variances
12. Ground for variances—Generally
13. —Unnecessary hardship

Cited:

Cited in *Glick v. Ossipee*, 130 N.H. 643, 547 A.2d 231, 1988 N.H. LEXIS 79 (1988); *Hannigan v. City of Con-*

cord, 144 N.H. 68, 738 A.2d 1262, 1999 N.H. LEXIS 70 (1999).

RESEARCH REFERENCES**New Hampshire Practice.**

15-29 N.H.P. Land Use Planning and Zoning § 29.18.
16-55 N.H.P. Municipal Law & Taxation § 55.05A.

674:42. Status of Existing Platting Statutes.

After a planning board is granted platting jurisdiction by a municipality under RSA 674:35, the planning board's jurisdiction shall be exclusive. All statutory control over plats or subdivisions of land granted by other statutes shall be given effect to the extent that they are in harmony with the provisions of this title. The planning board shall have all statutory control over plats or subdivisions of land. Prior laws which are inconsistent with the powers granted to the planning board and the municipality under this title, and which have expressly by ordinance been adopted by a municipality and made available to a planning board according to the provisions of this title, are hereby declared to have no application, force or effect so long as the powers conferred by this title shall continue to be exercised by a municipality.

Source.

1983, 447:1, eff. Jan. 1, 1984.

Cross References.

Effect of changes in regulations or ordinances upon approved plats, see RSA 674:39.

NOTES TO DECISIONS

Analysis

1. Generally
2. Public streets

1. Generally

Once a municipality created a planning board, that board had exclusive platting and subdivision jurisdiction; the city council retained no general concurrent jurisdiction. *Ehrenberg v. Concord*, 120 N.H. 656, 421 A.2d 128, 1980 N.H. LEXIS 373 (1980). (Decided under prior law.)

2. Public streets

Since former RSA 36:24 expressly stated that ap-

proval of a subdivision plan by a planning board did not constitute acceptance of any street shown on the plan, a planning board had no power to avoid application of RSA 231:51, which released and discharged from all public servitude any street dedicated to public use which had not been open, built or used within 20 years of dedication, and this section could not preempt application of RSA 231:51 to a street never accepted by a municipality. *Polizzo v. Hampton*, 126 N.H. 398, 494 A.2d 254, 1985 N.H. LEXIS 342 (1985). (Decided under prior law.)

Site Plans**Cross References.**

Building codes generally, see RSA 674:51 et seq.
Condominiums generally, see RSA 356-B.
Historic preservation generally, see RSA 227-C.

Subdivision regulation generally, see RSA 674:35 et seq.
Unit ownership of real property, see RSA 479-A.
Zoning generally, see RSA 674:16 et seq.

674:43. Power to Review Site Plans.

I. A municipality, having adopted a zoning ordinance as provided in RSA 674:16, and where the planning board has adopted subdivision regulations as provided in RSA 674:36, may by ordinance or resolution further authorize the planning board to require preliminary review

of site plans and to review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for multi-family dwelling units, which are defined as any structures containing more than 2 dwelling units, whether or not such development includes a subdivision or resubdivision of the site.

II. The ordinance or resolution which authorizes the planning board to review site plans shall make it the duty of the city clerk, town clerk, village district clerk or other appropriate recording official to file with the register of deeds of the county in which the municipality is situated a certificate of notice showing that the planning board has been so authorized, giving the date of such authorization.

III. The local legislative body of a municipality may by ordinance or resolution authorize the planning board to delegate its site review powers and duties in regard to minor site plans to a committee of technically qualified administrators chosen by the planning board from the departments of public works, engineering, community development, planning, or other similar departments in the municipality. The local legislative body may further stipulate that the committee members be residents of the municipality. This special site review committee may have final authority to approve or disapprove site plans reviewed by it, unless the local legislative body deems that final approval shall rest with the planning board, provided that the decision of the committee may be appealed to the full planning board so long as notice of appeal is filed within 20 days of the committee's decision. All provisions of RSA 676:4 shall apply to actions of the special site review committee, except that such a committee shall act to approve or disapprove within 60 days after submissions of applications, subject to extension or waiver as provided in RSA 676:4, I(f). If a municipality authorizes a site review committee in accordance with this paragraph, the planning board shall adopt or amend its regulations specifying application, acceptance and approval procedures and defining what size and kind of site plans may be reviewed by the site review committee prior to authorizing the committee.

IV. The local legislative body of a municipality may by ordinance or resolution establish thresholds based on the size of a project or a tract below which site plan review shall not be required. If a municipality establishes a size limit below which site plan review shall not be required, the planning board shall adopt or amend its regulations to clearly reflect that threshold. Nothing in this paragraph shall preclude the planning board from establishing such thresholds in the absence of action by the legislative body.

V. Site plan review shall not be required for a collocation or a modification of a personal wireless service facility, as defined in RSA 12-K:2.

Source.

1983, 447:1. 1987, 256:2. 1988, 9:1. 1995, 303:3, eff. Jan. 1, 1996. 2005, 33:1, eff. July 9, 2005. 2013, 267:10, eff. September 22, 2013.

Amendments

—2013. The 2013 amendment added V.

—2005. Paragraph I: Inserted "require preliminary review of site plans and to".

—1995. Paragraph IV: Added.

—1988. Paragraph III: Added.

—1987. Paragraph I: Inserted "or change or expansion of use" following "site plans for the development".

Severability of 2013 amendment.

2013, 267:12, eff. September 22, 2013, provided: "If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable."

Cross References.

Contents of regulations, see RSA 674:44.

NOTES TO DECISIONS

- | | |
|--|--|
| <p>Analysis</p> <ol style="list-style-type: none"> 1. Construction with other laws 2. Scope of review 3. Imposition of conditions | <ol style="list-style-type: none"> 4. Imposition of condition subsequent upon approval of application 5. Imposition of moratorium upon site development 6. Effect of zoning changes upon approved plans |
|--|--|

not operate as a zoning ordinance where zoning deliberations did not extend beyond a reasonable time; therefore, the adoption of the statute was not subject to the public hearing requirements of former RSA 31:63 (now covered by RSA 675:2) needed to enact zoning ordinances. *Socha v. Manchester*, 126 N.H. 289, 490 A.2d 794, 1985 N.H. LEXIS 297 (1985). (Decided under prior law.)

Cited:

Cited in *Real Estate Planners v. Newmarket*, 134 N.H. 696, 597 A.2d 78, 1991 N.H. LEXIS 125 (1991); *State v. Roy*, 138 N.H. 97, 635 A.2d 486, 1993 N.H. LEXIS 166 (1993).

RESEARCH REFERENCES**New Hampshire Practice.**

15-7 N.H.P. Land Use Planning and Zoning § 7.14.
15-11 N.H.P. Land Use Planning and Zoning § 11.04.
15-28 N.H.P. Land Use Planning and Zoning § 28.02.
15-29 N.H.P. Land Use Planning and Zoning § 29.23.
15-32 N.H.P. Land Use Planning and Zoning § 32.02.

New Hampshire Bar Journal.

For article, “‘Grandfathered’—The Law of Nonconforming Uses and Vested Rights,” see 31 N.H.B.J. 17 (1990).

676:13. Building Permits Restricted.

I. The building inspector shall not issue any building or occupancy permit for any proposed construction, remodeling, or maintenance which will not comply with any or all zoning ordinances, building codes, or planning board regulations which are in effect.

II. If any building inspector is prosecuted for violation of RSA 643:1 and found guilty of issuing any permit contrary to the provisions of this section, it shall be prima facie evidence that the building inspector has knowingly refrained from performing a duty imposed on the building inspector by law.

III. The building inspector shall adopt a form or set of standards specifying the minimum contents of a completed application for any building permit. Upon the submission of a completed application, the building inspector shall act to approve or deny a building permit within 30 days; provided, however, that nonresidential applications or residential applications encompassing more than 10 dwelling units shall be approved or denied within 60 days.

IV. The time for the building inspector to act upon building permits for collocation applications and modification applications for personal wireless service facilities shall be governed by RSA 12-K:10. In the event that the form or set of standards for a building permit application conflicts with any of the limitations under RSA 12-K:11 for a collocation application or a modification application for a personal wireless service facility, the limitations in RSA 12-K:11 shall control.

Source.

1983, 447:1. 1986, 150:1, eff. July 26, 1986. 1996, 226:3, eff. Jan. 1, 1997. 2013, 267:11, eff. September 22, 2013.

Amendments

—2013. The 2013 amendment added IV.

—1996. Paragraph II: Substituted “the building inspector” for “he” preceding “has knowingly” and “the building inspector” for “him” preceding “by law”.

—1986. Paragraph III: Added.

Severability of 2013 amendment.

2013, 267:12, eff. September 22, 2013, provided: “If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.”

Cross References.

Penalties for violations of title generally, see RSA 676:17.

RESEARCH REFERENCES**New Hampshire Trial Bar News.**

For article, “Presumptions in New Hampshire Law—A Guide Through the Impenetrable Jungle (Part

1),” see 10 N.H. Trial Bar News 55, 60 n.82 (Winter 1990).