New Hampshire
2017-18 Land Use Law in Review

Statutes and Cases

New Hampshire Office of Strategic Initiatives
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Today's Roadmap

- I. Finding the Law
- II. NH Statutory Changes
- III. NH Supreme Court Decisions
- IV. US Supreme Court

PART I
Finding the Law

Finding the Law

NH Statutes and Bills

- Revised Statutes Annotated (RSA)
  - www.gencourt.state.nh.us/rsa/html/indexes/default.html
- Search for Bills
  - http://www.gencourt.state.nh.us/bill_status/

NH Supreme Court Decisions

- www.courts.state.nh.us/supreme/opinions/index.htm

For Other Jurisdictions

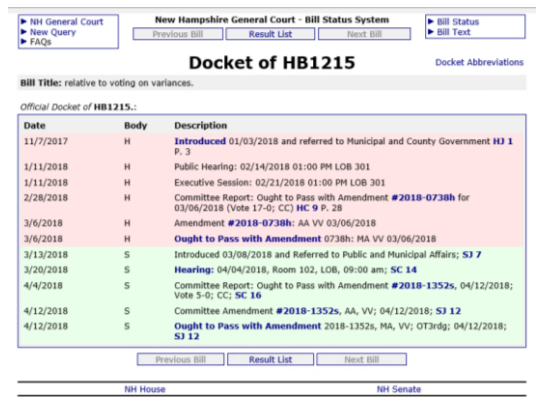
- Cornell Law School
  - www.law.cornell.edu/
- Google Scholar
  - http://scholar.google.com

Join Plan-link Nation! Confer with over 700 of your best friends

- http://www.nh.gov/oep/planning/services/mrpa/plan-link.htm

Legislative Tracking

- NH Municipal Association Bulletins
  - www.nhmunicipal.org
- Legislature's website
  - http://www.gencourt.state.nh.us/bill_Status/



▶ NH General Court
▶ New Query
▶ FAQs

New Hampshire General Court - Bill Status System

Previous Bill | Result List | Next Bill

▶ Bill Status
▶ Bill Text

Docket of HB1215

Docket Abbreviations

Bill Title: relative to voting on variances.

Official Docket of **HB1215.**:

Date	Body	Description
11/7/2017	H	**Introduced** 01/03/2018 and referred to Municipal and County Government **HJ 1** P. 3
1/11/2018	H	Public Hearing: 02/14/2018 01:00 PM LOB 301
1/11/2018	H	Executive Session: 02/21/2018 01:00 PM LOB 301
2/28/2018	H	Committee Report: Ought to Pass with Amendment **#2018-0738h** for 03/06/2018 (Vote 17-0; CC) **HC 9** P. 28
3/6/2018	H	Amendment **#2018-0738h:** AA VV 03/06/2018
3/6/2018	H	**Ought to Pass with Amendment** 0738h: MA VV 03/06/2018
3/13/2018	S	Introduced 03/08/2018 and Referred to Public and Municipal Affairs; **SJ 7**
3/20/2018	S	**Hearing:** 04/04/2018, Room 102, LOB, 09:00 am; **SC 14**
4/4/2018	S	Committee Report: Ought to Pass with Amendment **#2018-1352s**, 04/12/2018; Vote 5-0; CC; **SC 16**
4/12/2018	S	Committee Amendment **#2018-1352s**, AA, VV; 04/12/2018; **SJ 12**
4/12/2018	S	**Ought to Pass with Amendment** 2018-1352s, MA, VV; OT3rdg; 04/12/2018; **SJ 12**

Previous Bill | Result List | Next Bill

NH House | NH Senate

Other Sources

- *Land Use, Planning and Zoning*. Peter Loughlin, Esq. New Hampshire Practice Series, vol. 15. LexisNexis. Updated annually
- NHMA's "Town and City," online searchable index and full-text articles
- ***Don't forget to talk with your municipal attorney.*** That's the person who will be defending you in court! …and who can help keep you out of court in the first place.

"An ounce of prevention…"

PART II
NH Statutory Changes

7

Enacted Legislation

8

Planning and Zoning Notices 2017 HB 299 (Ch. 59)

- Changes method of application and hearing notices for both planning board and ZBA from *certified mail* (USPS only) to *verified mail* (USPS and other carriers).
- Defined in RSA 451-C:1, VII: VII.
  - "Verified mail" means any method of mailing that is offered by the United States Postal Service or any other carrier, and which provides evidence of mailing.
- Passed House and Senate *without amendment!*
- Effective 8/1/17

9

Land Use Board Ex Officio Alternates 2017 HB 514 (Ch. 143)

- Alternate Members of Planning Boards. Amend RSA 673:6, III to read as follows:
  - III. The alternate for a city or town council member, selectman, or village district commission member shall be appointed by the respective council, board, or commission ***in the same manner and subject to the same qualifications as the city or town council member, selectman, or village district commission member under RSA 673:2***. The terms of alternate members shall be the same as those of the respective members and may be in addition to the alternates provided for in paragraph I.
- Applies to all land use boards, except for ZBA, which doesn't have ex officio positions
- Effective 8/15/17

10

Small Wind Energy Systems 2018 HB 337 (Ch. 2)

- **2008 Legislation:** Municipalities can set standards for small wind energy systems (rated capacity of not more than 100 kW) made mostly for onsite consumption, but can't unreasonably regulate them
- Amend RSA 674:63, IV – unreasonable regulation includes:
  - IV. Setting a noise level limit [~~lower than 55 decibels~~] ***lower than specified by site evaluation committee rules***, as measured at the site property line, or not allowing for limit overages during short-term events such as utility outages and severe wind storms.
- **Implications:** Probably makes more sense, but is a harder-to-measure standard (and harder to find!)
- Effective 3/27/18

11

Seacoast Area Drinking Water Comm'n 2017 HB 431 (Ch. 138)

- The commission shall:
  a) Utilize and expand upon existing studies to plan for seasonal or drought supply issues.
  b) Prepare and discuss mutual aid between seacoast towns for firefighting.
  c) Prepare and discuss mutual aid agreements for emergency or replacement drinking water supply where contaminated.
  d) Create a centralized planning group to encourage coordination and support between towns.
  e) Evaluate threats to groundwater quality due to environmental issues.
  f) Monitor possible new emerging contaminant threats to groundwater and drinking water quality.
- Interim report 11/1/17; final report 11/1/18

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Coastal Resilience and RSA 79-E
2017 SB 185 (Ch. 203)

- Expands RSA 79-E
  - A city or town may adopt the provisions of this section by vote of its legislative body according to the procedures described in RSA 79-E:3, to establish a coastal resilience incentive zone (CRIZ). Municipalities may use storm surge, sea-level rise, and extreme precipitation projections in the 2016 report of the New Hampshire Coastal Risk and Hazards Commission, "Preparing New Hampshire for Projected Storm Surge, Sea-Level Rise, and Extreme Precipitation," and its successor projections, to identify potentially impacted structures.
- Also enables municipalities to create capital reserve or trust funds to account for municipal CRIZ costs for resiliency measures
- Effective 9/3/17

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Municipal Notice of SEC Proceedings
2017 SB 116 (Ch. 115)

- Expands notice provisions for major energy projects
  - "Affected municipality" means any municipality or unincorporated place in which any part of an energy facility is proposed to be located and any municipality or unincorporated place from which any part of the proposed energy facility will be visible or audible.
  - Notice at least 14 days prior to public information sessions and public hearing
- Effective 8/14/17
- **Implications:**
  - Broader public participation likely, but how do you send notice to an unincorporated place?
  - Potentially vastly increases the number of municipalities to be notified (lots can be seen from Sargent's Purchase)

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Accessory Dwelling Units
2017 HB 265 (Ch. 89)

- Expands municipal discretion regarding ADUs by
  - Allowing municipalities to prohibit ADUs associated with townhouse-style structures and with manufactured housing
    - This is enabling – requires action
  - Prohibiting future condominium conveyance of ADUs separate from the principal dwelling unit with which it is associated, unless the municipality wants to allow "condominiumization"
    - This is automatic, but municipal action may override it
    - This is an *exception* to the Condominium Act, RSA 356-B:5 –

      "No zoning or other land use ordinance shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership. …"
  - Effective 6/5/17

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ADUs and Septic Systems
2017 HB 258 (Ch. 238)

- **Note:** In 2016, DES promulgated new administrative rules that will require larger septic tank sizes for units with ADUs to account for the increased peak flow
- Amend RSA 674:72, V to read as follows:
  - The applicant for a permit to construct an accessory dwelling unit shall make adequate provisions for water supply and sewage disposal for the accessory dwelling unit in accordance with RSA 485-A:38, but separate systems shall not be required for the principal and accessory dwelling units. ***In order to comply with this paragraph and prior to constructing an accessory dwelling unit, an application for approval for a sewage disposal system shall be submitted in accordance with RSA 485-A as applicable. The approved sewage disposal system shall be installed if the existing system has not received construction approval and approval to operate under current rules or predecessor rules, or the system fails or otherwise needs to be repaired or replaced.***
- Effective 9/16/17

17

Lead Paint Poisoning
2018 SB 247 (Ch. 4)

- Reduces the blood lead levels that compel State notice to landlords and enforcement actions
- Establishes a loan loss guarantee for lenders who make loans for lead remediation work
  - See also SB 588, which has been amended to modify the terms of the loan loss reserve
- Prohibits the introduction to the market of new residential units in pre-1978 structures as of 7/1/24 without lead safe certification
  - **How will this be done?** What will be the role of local land use boards and building inspectors? Before granting a site plan, subdivision, or building permit, will the board/inspector have to ask the age of the structure? Who else would police such a standard?

18

Pending Legislation

19

Voting on Variances

- How does your ZBA vote on the 5 variance criteria?
  - Some take a single vote on all 5, others vote on each criterion individually (pros and cons); 3 votes in the affirmative required
  - *Neil Faiman's Plan-link post from 2004*:
    - Imagine a case where A, B, and C vote for "no diminution of property values", and D and E vote against.
    - Then B, C, and D vote for "in the public interest", and A and E vote against.
    - Then C, D, and E vote for "unnecessary hardship", and A and B vote against.
    - By the time you're done, the Board as a whole has found each of the five criteria to be satisfied by a 3-2 vote, yet every member of the Board believes that two of the criteria are NOT satisfied—in a straight vote to approve or disapprove the variance, it would have to be defeated 5-0!

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Voting on Variances 2018 HB 1215 – pending

- One vote, or five?
  - Requires every ZBA to use one method consistently until it votes to change how it votes on variances. Changes to voting method used only effective 60 days after the decision to change, and only affect applications filed after the change. Entire statute comprehensively renumbered.
  - Passed by both House and Senate. Original House version would have required ZBA to amend its rules of procedure or to consistently use one method of voting
- Note: 2017 HB 86 would have required a ZBA to vote on each variance criterion separately. Vetoed by the Governor.

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More ZBA Voting
2018 SB 339 – Pending

- RSA 674:33, III
  - Current law: 3 votes to reverse administrative action or decide in favor of the applicant
- Senate: Requires three votes for *any* ZBA action
- House: Requires votes of *any* three ZBA members for any ZBA action (for consistency with HB 1215)

- What's going on here? They're changing the law that's been around since 1925! But how did ***that*** law come to be?

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Standard State Zoning Enabling Act
A little history for you…

- The existing statutory language on ZBA voting is not unique to New Hampshire. It's from the Standard State Zoning Enabling Act (US Department of Commerce, 1926), which I suspect appears in a lot of state zoning enabling acts. The more widely published standard act is from 1926, but it was the 1924 draft of the standard act that served as the basis for NH's statute, adopted in 1925.
  - "The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance."
- This was intended to somewhat limit the power of the ZBA to deviate from the terms of the zoning ordinance (especially with regard to variances).

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Variance & Special Exception Expiration 2018 HB 1533 – Pending

- Note: in 2013, the Legislature clarified that variances and special exceptions should be good for at least two years – a statewide standard. RSA 674:33, 1-a and IV
- Here: Zoning may be amended to terminate variances and special exceptions that were authorized before 8/19/13, but have not been exercised
- Sequence of actions
  - Zoning amendment approved by local legislative body
  - Notice posted in town hall
  - Authorizations expire 2 years from date of posted notice
- Passed by both House and Senate

25

Housing Appeals Board 2018 SB 557 – Pending

- Creates an alternative to superior court for local decisions on housing and housing development
  - Concurrent, appellate jurisdiction
  - Response to developers who continue to face unreasonable local regulatory barriers (both facial and as-applied)
  - Jurisdiction includes mixed-use developments
- Modeled on the BTLA
  - 3-member board appointed by the Supreme Court
    - At least 1 attorney and 1 PE or LLS
    - All 3 must have experience in land use law a/o housing development
  - Staff, including clerk, secretary, and researcher
  - Non-attorney representation permitted

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Housing Appeals Board
2018 SB 557 – Pending

- Board powers
  - Same as superior court – does not have the power to override local zoning
  - Not bound by the rules of evidence
  - Hear appeals of local decisions; affirm, reverse, modify (not remand)
  - Builder's remedy available
- Appeals can only be brought by the applicant
  - Abutters and others with standing can intervene
  - Concurrent appeals in Board and court (Senate amendment)
- Enforceable as a court order
- Appeals of Board's decisions to Supreme Court

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Housing Appeals Board
2018 SB 557 – Pending

- Timeline
  - Appeals filed within 30 days of local decision
  - Hearing within 90 days of appeal
  - Decision within 60 days of hearing
  - Maximum total to final resolution = 150 days from appeal
- Bottom Line
  - Alternative to time-consuming and expensive trials
  - Latent demand for appeals
  - No impact on local control
    - Same standards continue to apply for decisions of local boards
- Passed by Senate; House sent the bill to interim study

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Agritourism
2016 SB 345 (Ch. 267)

- Repeals definition of agritourism and inserts new definition into "marketing or selling" in RSA 21:34-a, II (agriculture definition)
  - Text: (b)(5) The marketing or selling at wholesale or retail, [~~on-site and off-site, where permitted by local regulations,~~] ***of*** any products from the farm***, on-site and off-site, <u>where not prohibited by local regulations</u>. Marketing includes agritourism, which means attracting visitors to a farm to attend <u>events and activities that are accessory uses to the primary farm operation</u>, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm.***

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Agritourism (cont'd)
2016 SB 345 (Ch. 267)

- Adds agritourism to RSA 672:1, III-b and III-d
  - *Thou shalt not unreasonably limit…*
- Amends RSA 674:32-b, II
  - Text: Any new establishment, re-establishment after [abandonment], or significant expansion of a farm stand, retail operation, or other use involving on-site transactions with the public, ***including agritourism as defined in RSA 21:34-a,*** may be made subject to applicable special exception, building permit, or other local land use board approval and may be regulated to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety.
- Adds RSA 674:32-d
  - Agritourism is allowed on any property where agriculture is the primary use, subject to RSA 674:32-b, II

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Agritourism
2018 SB 412 – Pending

- Prohibits municipalities from adopting law that conflicts with the statutory definition of agritourism
- Property owner may petition Commissioner of Agriculture for a dispositive ruling on whether a proposed activity is agritourism. Appealable to the Supreme Court
- Passed by Senate and House

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Dredge & Fill Permit Deadlines
2018 HB 1104 – Pending

- Deadlines all reduced
- Applicant extensions automatic
- DES failure to act within timeframe: applicant written request for decision; DES has 14 days to decide; failure of DES to decide results in permit by default
  - Commissioner may suspend timeline in extraordinary circumstances
  - Doesn't apply to after-the-fact applications
- Conservation Commission investigations of permits by notice allow for additional 40 days for DES decision
- New owner liability reduced from 5 to 2 years
- Passed by the House; amended by the Senate (Senate Finance Committee further recommends passage)

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State Demographer
2018 HB 1817-FN – Pending

- Establishes position of State Demographer in OSI
- Requires agencies to make 10-year current service cost projections "adjusted only for demographically-induced changes"
- Passed by House and Senate (now in Senate Finance Committee)

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Private Road Maintenance
2018 SB 401 – Pending (not!)

- Note: Not for public highways (even Class VI)
- Without an agreement, "residential owners shall contribute rateably" to maintenance costs
  - Owners have a right to bring a civil action to enforce
  - Costs related to damage caused by a residential owner shall be borne exclusively
  - "Rateable contribution" is an insurance concept that doesn't work well here – responsibility based on owner's proportion of aggregate insurance coverage
- Passed by the Senate; House refused to consider

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Constitutional Amendments

- CACR 15 – taxpayer standing
  - Passed by the House (3/5 vote); pending in the Senate

    Amend Article 8 by adding: "The public also has a right to an orderly, lawful, and accountable government Therefore, any individual taxpayer eligible to vote in the State shall have standing to petition the Superior Court to declare whether the State or political subdivision in which the taxpayer resides has spent, or has approved spending, public funds in violation of a law, ordinance, or constitutional provision. In such a case, the taxpayer shall not have to demonstrate that his or her personal rights were impaired or prejudiced beyond his or her status as a taxpayer. However, this right shall not apply when the challenged governmental action is the subject of a judicial or administrative decision from which there is a right of appeal by statute or otherwise by the parties to that proceeding."
- CACR 16 – individual rights
  - Passed by the House (3/5 vote); pending in the Senate

    "[Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent."
- CACR 19 – local laws to override state laws
  - Killed by the House

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A Few That Didn't Make the Cut

- 2017
  - HB 92 – Updates building code to 2015 ICC Codes
  - HB 486 – Uniform statewide wetland buffers
  - HB 566 – Repealing RSA 79-E
  - HB 617 – Elimination of multiple daily fines for zoning violations
  - SB 173 – Prohibiting ADU use for short-term rentals
- 2018
  - HB 1602 – Assurance deeds (interim study)
  - HB 1635 – Licensing for short-term rentals (interim study)

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PART III
NH Supreme Court Decisions

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- All NH Supreme Court opinions are available on its website – go to www.nh.gov, find the Judicial Branch link on the right side, then click on the Supreme Court tab and select "Opinions."
- You can also get onto the Supreme Court's email list for notices of decisions.

Road Discontinuance

- Casagrande v. Goshen (2018)
  - 1891 town meeting article: "To see if the Town will vote to discontinue and throw up the highway leading from Willie E. Howe's to Newport town line providing Newport will throw up theirs to meet us."
  - Town meeting minutes: "Voted to throw up the road mentioned in this article." Newport didn't discontinue; what result?
  - Trial court: summary judgment for town
    - Section of Page Hill Road had <u>not</u> been discontinued
  - Supreme court:
    - Strong presumption against discontinuance
    - Town meeting votes are to be liberally construed – "…town meetings do not consistently express their purposes with legal precision and nicety…"
    - Affirmed

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Nonconforming Uses

- *Dartmouth Corp. of Alpha Delta v. Hanover* (2017)
  - Summary
    - While on "double secret" probation, members of AD branded the organization's letters on the bodies of new initiates
    - Dartmouth College "derecognized" AD's connection to the college; the relationship dated to the 1840s
    - As a result of its loss of connection to the college, AD became a non-conforming use
  - Hanover Zoning history:
    - 1931: Zoning adopted, including "Educational District" allowing dormitories "incidental to and controlled by an educational institution"
    - 1976: Hanover enacts its current zoning ordinance, including "Institution" district
      - Student residence allowed only by special exception

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Nonconforming Uses

- *Alpha Delta v. Hanover* (cont'd)
  - Current Controversy:
    - April 13, 2015: College revokes recognition of AD as a student organization.
    - April 23, 2015: Zoning enforcement – because AD "is no longer operated in conjunction with an institutional use"
  - ZBA Administrative Appeal
    - College letter to ZBA:
      - "…the Alpha Delta organization no longer has any official status relative to Dartmouth College and the College's relationship to [Alpha Delta]…is no different from its relationship to any other Hanover property owner."
    - ZBA denies the appeal, affirming the zoning administrator's decision: AD failed to show that its use was lawfully non-conforming

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Nonconforming Uses

- *Alpha Delta v. Hanover* (cont'd)
  - Superior court affirms ZBA ruling: AD "…needed to show that it operated [the property] in a manner that was not 'in conjunction with another institutional use' **at the time** the 'in conjunction with' requirement was adopted."
  - Supreme Court: "A nonconforming use is a lawful use existing **since prior** to the adoption of a zoning ordinance prohibiting such use, and that does not conform to the requirements of the ordinance."
  - Nonconforming uses protected by RSA 674:19 and by Part I, Articles 2 and 12 of the NH Constitution
    - "To qualify for such protection, a nonconforming use must lawfully exist at the time the restriction is adopted and have continually existed since that time."

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Nonconforming Uses

- *Alpha Delta v. Hanover* (cont'd)
  - Zoning ordinance has three pertinent requirements
    1. Student residence must operate "in conjunction with" another institutional use
    2. Special exception required
    3. Student residence must relate to the uses of the institution having ownership interest in land in the district
  - Here, the use predates the requirement for a special exception – grandfathered
  - "…the issue was whether Alpha Delta's use as a student residence, following the College's derecognition of the fraternity in 2015, continued to comply with the zoning requirement that a student residence in the Institution district operate in conjunction with another use."

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Nonconforming Uses

- *Alpha Delta v. Hanover* (cont'd)
  - AD tries to rely on ZBA's previous decisions, arguing that the ZBA is bound by *stare decisis*
    - *Stare decisis* – legal principal that decisions in previous cases binds a tribunal to reach the same conclusion in future matters
    - But does a ZBA's decisions have *precedential* value?
    - Court: "Assuming, without deciding, that the ZBA is bound by the principal of stare decisis, we disagree that the [previous] decision is relevant in this case."
  - AD argues that Hanover was selectively enforcing its zoning
    - "…the mere fact that a Town may have been lax in its enforcement in the past does not prohibit enforcement in the present."
    - But see *administrative gloss*

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Nonconforming Uses

- *Alpha Delta v. Hanover* (cont'd)
  - Another statement on nonconformities: "A lawful nonconforming use is a use in fact existing on the land **at the time of** adoption of the ordinance."
  - Court reviews "in conjunction with" phrase
    - "…the words and phrases of an ordinance should be construed according to the common and approve usage of the language.
    - Not defined in ordinance; Webster's – conjunction: the act of conjoining or state of being conjoined: union, association, combination
    - ZBA was presented no evidence of association between AD and College after derecognition
  - Affirmed
  - AD was subsequently denied a special exception

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Nonconforming Uses

- To wrap it up, here's *my* legal test:
  - **A nonconforming use may continue regardless of regulatory changes, provided it legally existed at the time of such changes and has continued since then without having been abandoned**
  - This is the essence of *grandfathering.* AD lost its grandfathered status because its use changed.
  - *Abandonment* is a topic we'll save for a later discussion…

Alpha Delta Update

- As reported in *The Dartmouth* on March 2, 2018
  - Plan B: use the building as an office for the AD Alumni Corporation
  - Structural modifications required: ADA compliance, removal of lofts and anything that would allow use as a residence
  - AD spokesman wishes people would stop breaking their windows
    - "We're going to have fun with it. It'll be good."
  - Use approved by the town.

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Variances & Spirit of the Ordinance

- *Foley v. Town of Enfield* (2018) – 3JX; not for precedent
  - 0.37-acre parcel with seasonal camp; proposed to be replaced with 2-story year-round house and 2-car garage
  - Variance sought for incursion of 30-foot setback
  - ZBA denied, as it would violate the spirit of the ordinance, a purpose of which is to prevent "the overcrowding of land" – See identical language in RSA 674:17, I(e)
  - Granting this variance would have limited impact, but could encourage others to try the same – potential future cumulative impact on neighborhood and natural resources
  - Affirmed by superior court
  - Supreme Court
- What do we mean when we say "overcrowded"?

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Developments of Regional Impact

- ***Warner Road Holdings, LLC v. Town of Warner***
  (Merrimack County Superior Court, 217-2017-CV-199, July 28, 2017)
  - ZBA's special exception ***vacated*** because it didn't ask the question
    - **<u>Does this have the potential for regional impact?</u>**
      - RSA 36:57, I: "A local land use board, as defined in RSA 672:7, upon receipt of an application for development, shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact."
    - **Criteria – RSA 36:55, including, but not limited to…**
      - I. Relative size or number of dwelling units as compared with existing stock
        II. Proximity to the borders of a neighboring community
        III. Transportation networks
        IV. Anticipated emissions such as light, noise, smoke, odors, or particles
        V. Proximity to aquifers or surface waters which transcend municipal boundaries
        VI. Shared facilities such as schools and solid waste disposal facilities
  - What's your DRI process? Check with your regional planning commission for its guidance

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PART IV
US Supreme Court

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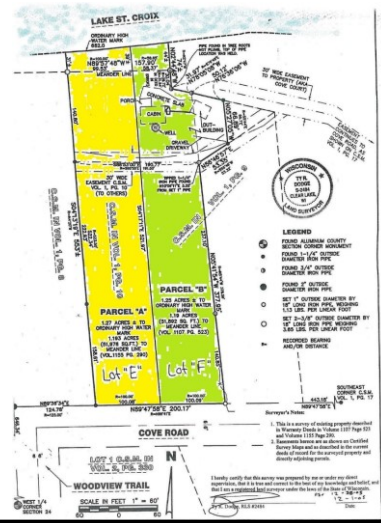
US Supreme Court – Takings!

- *Murr v. Wisconsin* (argued March 20, 2017)

Pacific Legal Foundation: "*Government won't pay the Murrs after taking the family's lot on the left because the family also owns the lot on the right.*"



Takings?

- *Murr v. Wisconsin* (cont'd)
  - Takings clause: "…nor shall private property be taken for public use without just compensation."
  - 1976 zoning: merger of nonconforming lots in common ownership
  - 1990s: Murr siblings took ownership of two legal nonconforming parcels from their late parents; one had been owned by the parents outright, and the other by the parents' plumbing company
  - As merged, the Murrs still have use of the property – has anything been taken?
  - Precedent: look at the "parcel as a whole"
    - Takings law "denominator problem" – what is the property?
  - Upholding the WI Supreme Court, the US Supreme Court sidesteps the taking issue and focuses on the nature of property boundaries as functions of state law – long history of merger in WI
  - No longer an issue in NH: involuntary mergers are now illegal

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