So, you want to be on the Planning Board or Zoning Board of Adjustment . . .

What are the qualifications to being on a Planning Board (PB) or Zoning Board of Adjustment (ZBA)?

- You must live in and be a resident of the municipality in which you want to serve and be a US citizen. (RSA 673:2, II[a]; 673:3, I; 669:6; 91:2; 655:1; and 655:2)

How and when do the boards meet?

- The PB is the only land use board that is required to meet at least once a month (RSA 673:10). Many boards meet more than that but it is up to the individual board and their particular workload.
- The ZBA meets at the call of the chairman (RSA 673:10). Most boards have a regular monthly meeting but they are only required to meet when they have business to transact.
- There are situations where the PB and ZBA might meet jointly. (RSA 676:2)

If I’m on another board in town, can I also serve on the PB or ZBA?

- In towns, two PB members may serve on any other board, but no more than one PB member may be on the conservation commission, board of selectmen, ZBA, building code board of appeals, historic district commission, heritage commission, agricultural commission, or housing commission. (RSA 673:7, I)
- In cities, an appointed PB member may not hold any other municipal office except that one member may be on the ZBA, conservation commission, heritage commission, historic district commission, agricultural commission, or housing commission. (RSA 673:7, II)

Are all meetings open to the public?

- Yes. This applies to both PBs and ZBAs. Both boards are subject to the Right to Know law (RSA 91-A). All meetings are open to the public, including public hearings and the deliberative portion of application review when the board discusses amongst themselves the merits of an application and votes to approve or deny.
- Meetings may be audio-video recorded by the public or the media. (RSA 91-A:2, II)
- Site walks are meetings that must be open to the public.
- A meeting means the convening of a quorum or the majority of the membership of the board in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. (RSA 91-A:2, I)
- A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. (RSA 91-A:2, I)
- A PB or ZBA may very infrequently hold a non-public session for one of the limited purposes in the statute. Except for litigation, these rarely arise with a local land use board. (RSA 91-A:3)
What do they do?

- The only required duty of the Planning Board is to prepare and from time to time amend the master plan. (RSA 674:1, I)
  - Their judicial functions include
    - Review of subdivision applications (RSA 674:35; RSA 674:36)
    - Review of site plan review applications (RSA 674:43; RSA 674:44)
    - Review of excavation applications (RSA 155-E)
  - Their legislative functions include
    - Adoption/amendment of the master plan (RSA 675)
    - Adoption/amendment of the subdivision regulations (RSA 675)
    - Adoption/amendment of the site plan review regulations (RSA 675)
    - Adoption/amendment of the capital improvements program unless that has been conveyed to a separate CIP committee (RSA 674:5)
    - Adoption/amendment of the excavation regulations (RSA 155-E: 11)
    - Propose amendments to the zoning ordinance (RSA 675:3, I)
- The Zoning Board of Adjustment has no formal legislative function. However, they may consult informally with the PB during the zoning ordinance amendment process to offer suggestions on what might be changed or for other matters. They have 4 major areas of jurisdiction dealing solely with the content of the zoning ordinance. The ZBA has no authority to review any conflicts or questions about the subdivision or site plan review regulations.
  - The ZBA’s four areas of jurisdiction are:
    - Appeals of administrative decisions (RSA 674:33)
    - Variances (RSA 674:33)
    - Special exceptions (RSA 674:33)
    - Equitable waiver of dimensional requirements (RSA 674:33-a)
  - The ZBA may also be authorized for these additional duties
    - Building Code Board of Appeals (RSA 673:1, V)
    - Developments of Regional Impact (RSA 36:54-58)
    - Earth Excavation (RSA 155-E:1, III)
    - Junkyard Licensing (RSA 236:115)
    - Airport Zoning (RSA 424:6-a)
    - Official Map (RSA 674:13)
    - Building on class VI and unapproved private roads (RSA 674:41, II)
    - Historic District Commission appeals (RSA 677:17)

How are they created?

- The local legislative body determines if there is a planning board. (RSA 673:1)
- If a municipality votes to adopt a zoning ordinance, there must also be a zoning board of adjustment. (RSA 673:1, IV)
• The size of a PB can vary from 5 to 9 members depending on the city charter or decision by the local legislative body. (RSA 673:2)
• A ZBA is always 5 members. (RSA 673:3, I)
• Both a PB and ZBA may have alternate members who should meet regularly with their board and can be activated for absent or recused members or can be appointed to fulfill an unexpired term. (RSA 673:6)
• Being an alternate is often a good way for prospective members to get a feel for what the board does without becoming a full member.

Are members elected or appointed?

• A PB may be elected or appointed. (RSA 673:2)
• A ZBA may be elected or appointed. (RSA 673:3)
• The decision on whether planning and/or zoning board members are elected or appointed is made by the legislative body (town meeting, town council, city council, or board of aldermen).

How long would I serve?

• The term of office for either board, appointed or elected, is 3 years. (RSA 673:5, II)
• Members may run, or be appointed to subsequent terms.

Am I personally liable for anything? (Adapted from Handbook for Local Officials, NHMA 2001)

• Immunity
  Individual officials, as long as they're acting in their official capacity and in good faith, are immune from liability for discretionary functions, just as the municipality is. [RSA 31:104] The N.H. Supreme Court held, in the important case of Voelbel v. Town of Bridgewater, 144 NH 599 (1999), that municipal officials acting in a purely legislative capacity, such as discussing the termination of a police officer during a town meeting, were entitled to absolute immunity from defamation claims. However, officials not acting in a purely legislative manner may not enjoy discretionary immunity.

• Indemnification
  This term means the municipality must pay any liability that you incur as an individual acting for the municipality, providing your acts are taken in good faith. For state law tort actions, the municipality may indemnify its officials and employees. See RSA 31:105. Doing so requires a vote of the board of selectmen. This indemnification protection, even when adopted, covers only good faith actions. It does not cover intentional or malicious behavior by a municipal official.

• Protection from Attachment
  RSA 31:108 prohibits someone who sues you in your official capacity from attaching any of your property.

• “Show Cause” Hearing
  Under RSA 491:24, any time a local official is sued and bad faith is alleged, the court must hold a
preliminary hearing within 90 days to see whether there is any basis for the bad faith claim. If not, and if the judge thinks the suit was filed only to harass you, the judge will award your costs and lawyer's fees.

- **Criminal Liability**
  Public officials can be held guilty of violations of the criminal code. Violations will not be excused merely because the person is a public official. But there may be times when the authority of an official allows him/her to do something that might be a criminal violation if done by someone else. Examples include: a health officer entering upon private property to abate a health nuisance, or a fire chief redirecting traffic. Exercise extreme caution in such cases, and don't act without legal advice. For further discussion of the issues surrounding entry onto private property, see the section in Chapter I on "Administrative Inspection Warrants."

**Can I be removed from a board if I do something wrong?**

- Only other board members can request that a vote be taken about whether you should step down (recuse yourself) or not if you appear to be disqualified to sit on a particular case. This vote is advisory only and non-binding – the decision is solely yours. ([RSA 673:14](http://www.nh.gov/oep/planning/resources/publications.htm))
- You should recuse yourself if you
  - Are an abutter (or a directly affected neighbor who is not an abutter) to a project
  - Are a relative of the applicant
  - Have financial interest in an application under consideration
  - Have significant business relationships with the applicant
  - Have pre-formed a decision about the application
  - Have an employment relationship with the applicant
  - Are currently using the same lawyer or engineer as the applicant
  - Are a PB member on the ZBA and hearing an administrative appeal from a PB decision
- The ultimate inquiry in any conflict scenario is whether the land use board member is "indifferent."
- There is a formal removal process for gross misconduct. ([RSA 673:13](http://www.nh.gov/oep/planning/resources/publications.htm))
  - Only after a public hearing
  - Requires written finding of inefficiency, neglect of duty or malfeasance
  - Removal power lies with appointing authority or with selectmen for elected boards

For additional information see

- [The Planning Board in New Hampshire: A Handbook for Local Officials](http://www.nh.gov/oep/planning/resources/publications.htm) and