§ 2.23 Zoning for Aesthetics

The very first zoning case decided by the New Hampshire Supreme Court, Sundeen v. Rogers, discussed the legitimacy of zoning for aesthetic values. The court held that the fact that the ordinance promoted aesthetic values was not a valid objection in light of the fact that it otherwise promoted the health, welfare, and safety of the community. It further pointed out that even if the aesthetic quality was the inducement for making an ordinance prohibiting accessory buildings in the front yard, it would still invalidate the regulation. The fact that aesthetic considerations which foster civic beauty and preserve places of historic and architectural value are also motivating factors in the enactment of a land use regulation is not fatal.

The beauty of a residential neighborhood is for the comfort and happiness of the residents and tends to sustain the value of property in the neighborhood. It is a matter of general welfare, like other conditions, that adds to the attractiveness of a community and the value of the residences located there.

Related to the question of zoning for aesthetics is the entire topic of historic district zoning which will be discussed elsewhere in this book. Suffice it to say here that historic district preservation may be incorporated into an overall plan to promote the community's general welfare. Planning boards may regulate land use and even prohibit lot line readjustments based on the historical character and significance of a property that is located in a historic district. Land use boards, under certain circumstances, may legitimately be concerned about the effect that a particular proposal may have on the visual appearance of a part of the community. The protection of historic landmarks and areas is a legitimate and recognized exercise of a town's police powers for the purpose of promoting that town's general welfare.

The New Hampshire Supreme Court eliminated any doubt about the ability of a municipality to use its zoning powers to promote aesthetics in Asselin v. Town of Conway, where the Court stated:

We now conclude that municipalities may validly exercise zoning power solely to advance aesthetic values, because the preservation or enhancement of the visual environment may promote the general welfare. See RSA 674:16, I; Opinion of the Justices, 103 N.H. 268, 270, 169 A.2d 232 (1961).

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290 Sundeen v. Rogers, 83 N.H. 253, 141 A. 142 (1928).
291 Sundeen, 83 N. H. at 259, 141 A. at 145.
292 Sundeen, 83 N. H. at 259, 141 A. at 145.
293 Deering v. Tibbetts, 105 N.H. 481, 202 A.2d 232 (1964) (upheld police power ordinance that prohibited erection of trailers and certain other structures within one quarter mile of town common).
294 Other Controls Affecting Land Use, see pt. IV, infra.
297 Portsmouth Advocates, Inc. v. City of Portsmouth, 133 N.H. 876, 880, 587 A.2d 600, 602 (1991)
298 137 N.H. 368, 628 A.2d 247 (1993) (Conway's prohibition on internally illuminated signs not invalid even though adopted solely for the purpose of promoting aesthetics).
299 Asselin, 137 N.H. at 371-72, 628 A.2d at 248.
While municipalities can enact zoning regulations to protect the aesthetics of the community, like any zoning ordinance, such provisions must be rationally related to the town's legitimate goals and must not be arbitrary or unreasonable as applied to a particular parcel of property.300

Library References
6A E. McQuillin, Municipal Corporations, §§ 24.15, 24.16 (3d Ed. 2007)
1 P Salkin, American Law of Zoning, §§ 7.13:7.25 (5th ed.)