



February 6, 2013

The Honorable David Boutin, Chair  
Senate Public and Municipal Affairs Committee  
Legislative Office Building, Room 102  
Concord, NH 03301

***Subject: SB 49, relative to appeals of planning board decisions.***

Dear Senator Boutin:

The New Hampshire Planners Association, representing over 200 land use planning professionals in our state, working at all levels of government and in the private sector, takes this opportunity to express its support for SB 49 which clarifies the procedure for appeals of planning board decisions involving matters of zoning ordinance interpretation.

Planning Boards, from time to time, make decisions with respect to site review or subdivision applications that constitute interpretations of the zoning ordinance. RSA 677:15.I recognizes that in these cases, an appeal of such a decision should be made to the Zoning Board of Adjustment which is the body empowered to hear appeal of zoning determinations per RSA 674:33.I(a). The rationale for requiring an initial layer of review at the local level for decisions involving the interpretation of a zoning ordinance is to ensure uniform application of local zoning laws. However, the precise mechanics of appealing a planning board decision that also involves an appeal to the ZBA of a zoning matter is left to interpretation under the existing statute.

The result is substantial confusion and, in many cases, unfair results for all parties involved whether they be the applicant, abutters, or the municipality. For example, is not uncommon for appeals to be made to the ZBA only for a court to determine later that the subsequent appeal to the Superior Court was not timely since it was not made within the 30 day appeal period. It is also not uncommon for the Court to make a determination that a particular matter should have been appealed to the ZBA, but since it was not, the right to appeal is lost.

Fortunately, SB 49 clarifies with precision the procedure to be followed in these cases. First, the bill specifically provides that appeals of Planning Board decisions can be made within 30 days of a final decision by the ZBA of any matter involving zoning interpretation. Further, that if an appeal is made to the Superior Court by any other party prior to a final determination by the ZBA, such an appeal is stayed until resolution of the zoning matter. Finally, the bill provides that in the event the Superior Court determines that any matter should have first been heard by the Zoning Board of Adjustment, the Superior Court appeal is stayed until resolution of the zoning matter at the local level.

For these reasons, we urge your committee to recommend SB 49 as "ought to pass." Thank you for this opportunity to provide comment on the bill.

Sincerely,

Timothy J. Corwin, Esq.  
NHPA Legislative Liaison