



TOWN OF PELHAM

6 Village Green
Pelham, New Hampshire 03076

The Local Appeals Process - Frequently Asked Questions

This FAQ document is intended to provide general advice to applicants, abutters, and citizens who wish to know more about the appeals process for local land use decisions. The advice in this document does not constitute legal advice.

The processes described in this document are regulated by New Hampshire state law. Legal citations are provided so that individuals may conduct their own research. You may browse the state of New Hampshire statutes by pointing your internet browser to this link:

<http://www.gencourt.state.nh.us/rsa/html/indexes/default.html>

Issues regarding appeals of decision involve complex questions regarding legal rights and require strict adherence to statutory guidance. Legal advice is often required to weave through these matters and an attorney is recommended to insure all options are protected as anyone confronts these matters. It is our first and primary piece of advice that you seek legal counsel on any matter related to the appeals process of any local land use decision.

-Pelham Planning Department

General Information on Appeals

I have my approval/permit. Can I start construction or do I have to wait for an appeal period to lapse?

Construction and other activities that are completed during the pending appeal period for any permit or approval is always “at-risk”. Although the Town of Pelham will issue approvals and permits, an appeal can result in a halt to construction and in some cases, removal of construction in furtherance of a permit that is overturned or revoked.

What can be appealed?

Almost any decision made by the Planning Board, Zoning Board of Adjustment, Zoning Administrator and the Building Inspector can be appealed. Although the reviewing authority, time frames and processes are different, it is important to note that an appeal can occur regarding almost all local actions. Such decisions include but are not limited to: Planning Board Site Plan and Subdivision Approvals and Special Use Permits; Zoning Board of Adjustment Variances, Special Exceptions, and Appeals from Administrative Decisions; and Building Permits and Administrative Decisions of the Zoning Administrator (Planning Director) or Building Inspector can also be appealed.

When do I have to file an appeal?

For all appeals time is of the essence. On December 17, 2009 this document was revised to reflect a 12/14/09 change to the ZBA Bylaws that makes all appeal periods thirty (30) days regardless of which Town official or land use board arrived at the approval, denial or administrative decision being appealed. As with all appeals, we recommend that consultation with an attorney be considered to insure compliance with these requirements.

Do I need an attorney to file an appeal?

Although an attorney is not required to file any local appeal, it is strongly recommended that legal counsel be sought as these processes require careful attention to detail and legal requirements. Attorneys specializing in land use and municipal law can be found in the phone book and by contacting the New Hampshire Bar Association in Concord.

Can the Town of Pelham staff help me?

Staff of the Town of Pelham can provide objective information regarding the process and copies of public documents that are part of the file in the matter. In terms of strategy and legal rights, such matters should only be discussed with your attorney and cannot be provided by Town of Pelham staff.

The Appeals Process

What do I need to file an appeal?

In order to file an appeal, a person must have “standing”, i.e., the legal right to challenge the board’s decision. Abutters to the property will almost always have standing along with persons who own property close enough to the land in question to demonstrate that they are affected directly by the town’s action. One way to determine whether someone has standing, or qualifies as “a person aggrieved”, is whether the person requesting the appeal is impacted differently than the public at large. For appeals at the local level an appeal application must be filed. These applications can be obtained at town hall or on the Pelham Web site, www.pelhamweb.com.

Where and with whom do I file the appeal?

Appeals must be filed with the Town of Pelham Planning Department. The decision being appealed determines which board must hear the appeal. Applications can be picked up from the Planning Department or downloaded from the Planning Department’s section of the Town website at www.pelhamweb.com.

Decision of the Code Enforcement Officer / Zoning Administrator (Including the issuance of a building permit) (NH RSA 676:5):

The ZBA is empowered to 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. This appeal is known as an appeal of an administrative decision. The Pelham Zoning Ordinance requires such an appeal to be filed **within thirty (30) days** of the written order or decision. Pelham Zoning Ordinance § 307-85.

Decisions of the Planning Board

Interpreting the Zoning Ordinance (NH RSA 676:5):

The appeal of a planning board decision that is based upon an interpretation of the zoning ordinance must be appealed to the ZBA. This appeal must be filed **within thirty (30) days** of the approval. This appeal must be done prior to a court appeal on the same matter and at the same time as any other appeal of the planning board decision that must be taken to Court. Thus, an appeals process may require an appeal to court and an appeal to the ZBA at the same time. The exception to this rule appears when the Planning Board is granting a special permit.

Decision on a Special Use Permit (NH RSA 676:5):

The appeal of a planning board decision to issue or deny a special permit must be appealed directly to Court and cannot be appealed to the ZBA. This appeal must be taken **within thirty (30) days** of the vote of the board. NH RSA 677:15.

Decisions on Site Plan or Subdivision Applications (NH RSA 677:15):

The appeal of a Planning Board decision involving its own regulations must be appealed directly to the court **within thirty (30) days** of the vote of the board. As above, matters that involve zoning interpretations must be appealed to the ZBA, see above.

Variance from the requirements of the Zoning Ordinance:

A variance is a form of appeal. NH RSA 674:33 authorizes, upon appeal, in specific cases, such variance from the terms of the zoning ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

The appeal for a variance is usually from a determination of the Zoning Administrator (in the case of Pelham, this is the Planning Director) or Zoning Board of Adjustment (ZBA). Where the requirement cannot be appealed as an administrative decision a variance is required.

Appealing a decision of the Zoning Board of Adjustment.

How do I appeal a decision of the Zoning Board of Adjustment?

Any appeal from any decision of the ZBA first requires the filing of a “Motion for Rehearing”. This process is required and is covered by NH RSA 677:2. The motion must be filed **within thirty (30) days**, subject to further requirements found in the statute.

What happens at a Motion for Rehearing?

The first step will be for the ZBA to deliberate on whether to grant a rehearing. If the rehearing is granted, the formal hearing process is completed and a new decision is made (the new decision can be the same or different from the prior decision). If the decision is upheld (the same), the appellant can go to Court. If the board reverses a decision at a rehearing, a new aggrieved party results and that party then has 30 days in which to appeal for a rehearing on the new decision. *(This does not mean that boards of adjustment will be forced to consider an endless series of rehearing applications, for it is only when the board reverses itself at a rehearing - thus creating new aggrieved parties - that the statute comes into play.)* Shaw v. City of Manchester 118 NH 158, (1978). (See Dziama v. City of Portsmouth, 140 N.H. 542, 669 A.2d 217 [1995]). When the Board votes to deny a rehearing or upholds its previous decision the next step is Superior Court.

What happens after the Motion for Rehearing?

Once the motion for rehearing process has ended, the decision of the ZBA can be appealed to Superior Court. An appeal to the Court must be filed **within thirty (30) days** of the decision. NH RSA 677:4.

Other appeals, legal strategies, and options may be available, but are beyond the scope of this document. We recommend that you seek advice from an attorney on such matters.