

[RSA 674:41](#)

Statutes current through Chapter 6 of the 2024 Regular Session.

LEXIS™ New Hampshire Revised Statutes Annotated > Title LXIV Planning and Zoning (Chs. 672 — 679)
> Chapter 674 Local Land Use Planning and Regulatory Powers (§§ 674:1 — 674:76) > Regulation of
Subdivision of Land (§§ 674:35 — 674:42)

674:41. Erection of Buildings on Streets; Appeals.

I. From and after the time when a planning board shall expressly have been granted the authority to approve or disapprove plats by a municipality, as described in [RSA 674:35](#), no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed:

- (a) Shall have been accepted or opened as, or shall otherwise have received the legal status of, a class V or better highway prior to that time; or
- (b) Corresponds in its location and lines with:
 - (1) A street shown on the official map; or
 - (2) A street on a subdivision plat approved by the planning board; or
 - (3) A street on a street plat made by and adopted by the planning board; or
 - (4) A street located and accepted by the local legislative body of the municipality, after submission to the planning board, and, in case of the planning board's disapproval, by the favorable vote required in [RSA 674:40](#); or
- (c) Is a class VI highway, provided that:
 - (1) The local governing body after review and comment by the planning board has voted to authorize the issuance of building permits for the erection of buildings on said class VI highway or a portion thereof; and
 - (2) The municipality neither assumes responsibility for maintenance of said class VI highway nor liability for any damages resulting from the use thereof; and
 - (3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds; or
- (d) Is a private road, provided that:
 - (1) The local governing body, after review and comment by the planning board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof; and
 - (2) The municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and
 - (3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought; or
- (e) Is an existing street constructed prior to the effective date of this subparagraph and is shown on a subdivision plat that was approved by the local governing body or zoning board of adjustment before the municipality authorized the planning board to approve or disapprove subdivision plats in accordance with [RSA 674:35](#), if one or more buildings have been erected on other lots on the same street.

RSA 674:41

II. Whenever the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and when the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets, the applicant for such permit may appeal from the decision of the administrative officer having charge of the issuance of permits to the zoning board of adjustment in any municipality which has adopted zoning regulations in accordance with RSA 674, or, in municipalities in which no board of adjustment exists, to the local legislative body, or to a board of appeals, whichever is appropriate, in accordance with [RSA 674:14](#) and [674:15](#), including the requirement for a public hearing. In a municipality which does not require building permits, direct application may be made to the zoning board of adjustment, or the local legislative body, or the board of appeals for permission to erect the building. In passing on such appeal or application, the board of adjustment, local legislative body, or board of appeals may make any reasonable exception and shall have the power to authorize or issue a permit, subject to such conditions as it may impose, if the issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based, and if erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality. Any such decision made in this connection by a board of adjustment, local legislative body, or by a board of appeals pursuant to this section and [RSA 674:14](#) and [674:15](#) shall be in writing, together with the reasons for the decision, and shall be subject to review in the manner described in RSA 677.

II-a. Municipalities may except any lot, including island lots for islands served exclusively by boats, from the requirements of paragraphs I and II by an affirmative vote of the local legislative body pursuant to RSA 675, first submitted to the planning board for its approval and:

- (a) If approved by the board, approved by a majority of those present and voting at a regular or special meeting of the local legislative body; or
- (b) If disapproved by the planning board, approved by not less than $\frac{2}{3}$ of those present and voting at a regular or special meeting of the local legislative body.

III. This section shall supersede any less stringent local ordinance, code or regulation, and no existing lot or tract of land shall be exempted from the provisions of this section except in accordance with the procedures expressly set forth in this section. For purposes of paragraph I, “the street giving access to the lot” means a street or way abutting the lot and upon which the lot has frontage. It does not include a street from which the sole access to the lot is via a private easement or right-of-way, unless such easement or right-of-way also meets the criteria set forth in subparagraphs I(a), (b), (c), (d), or (e).

IV. In addition to the requirements for the erection of buildings in paragraph I and notwithstanding the exceptions provided in paragraph II, the planning board for a county in which there are located unincorporated towns or unorganized places shall require every building which is erected on leased land located within an unincorporated town or unorganized place to have a building permit. A building permit shall be required under this paragraph regardless of the proximity of the building to any street or highway. The county shall, by resolution, authorize the planning board to issue building permits under this paragraph.

History

1983, 447:1; 1988, 131:2, 3; 1989, 266:20; [1995, 291:10](#), eff. Aug. 20, 1995; [1998, 344:6](#), eff. Aug. 25, 1998; [2002, 270:1](#), eff. July 17, 2002; [270:5](#), eff. April 17, 2002; [2004, 154:1, 2](#), eff. July 23, 2004; [2005, 226:1, 2](#), eff. Sept. 3, 2005.

Annotations

Notes

Amendment Notes

—1988.

RSA 674:41

Paragraph II: Substituted “RSA 674:14 and 15” for “RSA 677” following “in accordance with” in the first sentence and preceding “shall be in writing” in the fourth sentence and made other minor stylistic changes.

Paragraph III: Added.

—1989.

Paragraph IV: Added.

—1995.

Paragraph III: Rewritten to the extent that a detailed comparison would be impracticable.

—1998.

Paragraph II-a: Added.

—2002.

Paragraph I(c)(3): Added “or” following “of deeds”.

Paragraph I(d): Added.

—2004.

Paragraph I(d)(3): Added “or” to the end of the paragraph.

Paragraph I(e): Added.

—2005.

Paragraph II-a: Inserted “any lot, including” preceding “island lots” and “pursuant to RSA 675” in the introductory paragraph.

Paragraph III: Substituted “subparagraphs I(a), (b), (c), (d), or (e)” for “subparagraphs I(a), (b), or (c)”.

NOTES TO DECISIONS

1. Purpose

2. Construction

3. Particular cases

1. Purpose

Purpose of provision of this section limiting erection of buildings on class VI highways, which applies with equal force to building permits and subdivision permits, is to provide against such scattered or premature subdivision as would necessitate excessive expenditure of public funds. [Turco v. Barnstead, 136 N.H. 256, 615 A.2d 1237, 1992 N.H. LEXIS 164 \(N.H. 1992\)](#).

Plaintiff landowners' subdivision request was not improperly denied by town, where this section, prohibiting building on class VI roads, applied to subdivision permits, and estoppel did not apply. [Turco v. Barnstead, 136 N.H. 256, 615 A.2d 1237, 1992 N.H. LEXIS 164 \(N.H. 1992\)](#).

Paragraph I of this section, prohibiting local planning boards from issuing building permits unless the street giving access to the lot qualifies as a class V or better highway, applies to all building permit applications, not just to subdivision applications. [Vachon v. New Durham Zoning Bd. of Adjustment](#), 131 N.H. 623, 557 A.2d 649, 1989 N.H. LEXIS 29 (N.H. 1989).

2. Construction

In construing the statute, [RSA 674:41](#), I(c) does not conflict with [RSA 674:41](#), II. Rather, it simply sets forth the procedure to be followed by those applicants who cannot, choose not, or need not, demonstrate a practical difficulty or unnecessary hardship. [Blagbrough Family Realty Trust v. A & T Forest Prods.](#), 155 N.H. 29, 917 A.2d 1221, 2007 N.H. LEXIS 25 (N.H. 2007).

3. Particular cases

It was error to approve a subdivision on a lot abutting plaintiff's property, as the deed's reference to the 2006 plan incorporated the 2006 plan into the recorded deed, and the plan limited the use of an access easement to a single lot; given this limitation on the access easement, the planning board's decision to conditionally approve the subdivision contradicted [RSA 674:41](#), which required that a lot have access to a street. [Harvey v. Town of Barrington](#), 2024 N.H. 10, 2024 N.H. LEXIS 24 (N.H. 2024).

Because [RSA 674:41, II](#) and [RSA 674:33, I\(b\)](#) explicitly establish separate procedures for seeking exceptions to building permit requirements and seeking variances, petitioner needed to bring its variance application before the zoning board of adjustment in an action separate from its appeal to the trial court of the denial of its building permit application, and res judicata was inapplicable to petitioner's variance application. [Merriam Farm, Inc. v. Town of Surry](#), 168 N.H. 197, 125 A.3d 362, 2015 N.H. LEXIS 103 (N.H. 2015).

Under the statute in effect when a public highway was discontinued in 1895, a town could not have made it a private road, and there was no evidence of an attempt to change its discontinued status. Thus, because the road was not private, it did not satisfy [RSA 674:41](#), I(d), and a zoning board lawfully denied a building permit application. [Russell Forest Mgmt., LLC v. Town of Henniker](#), 162 N.H. 141, 27 A.3d 651, 2011 N.H. LEXIS 81 (N.H. 2011).

As a private roadway was a street on a subdivision plat, which the town planning board had approved, [RSA 674:41](#), I(b)(2) governed the subdivision building permits. [Crowley v. Town of Loudon](#), 162 N.H. 768, 35 A.3d 597, 2011 N.H. LEXIS 176 (N.H. 2011).

As residents purchased their homes with notice that the town had limited responsibility and liability for a private roadway, and they failed to show a public need for the road, the trial court properly determined that there was no occasion for laying out the roadway as a public road pursuant to [RSA 674:41](#), I(d) and 231:38, I. [Crowley v. Town of Loudon](#), 162 N.H. 768, 35 A.3d 597, 2011 N.H. LEXIS 176 (N.H. 2011).

Research References & Practice Aids

Research References and Practice Aids

Cross References.

Approval and recording of plats, see [RSA 674:37](#).

Effect of approval of plats generally, see [RSA 674:38](#), 39.

RSA 674:41

Master plans generally, see [RSA 674:1](#) et seq.

Official municipal maps generally, see [RSA 674:9](#) et seq.

Requirement and issuance of building permits generally, see [RSA 676:11](#) et seq.

New Hampshire Practice.

[15-29 N.H.P. Land Use Planning and Zoning § 29.18.](#)

16-55 N.H.P. Municipal Law & Taxation § 55.05A.

Hierarchy Notes:

[RSA Title LXIV](#)

[RSA Title LXIV, Ch. 674](#)

[RSA Title LXIV, Ch. 674, Regulation of Subdiv. of Land](#)

LEXIS™ New Hampshire Revised Statutes Annotated
Copyright © 2024 All rights reserved.