

Establishment of the NH Housing Appeals Board

New Hampshire Housing Finance Authority
Legislative Advocacy: State Advocacy

HFA Staff Contact

Grace Lessner

glessner@nhhfa.org

NEW HAMPSHIRE HOUSING

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Category: Legislative Advocacy – State Advocacy (new program)

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ENTRY SUMMARY

The New Hampshire Housing Appeals Board was created to provide an alternative appeals process for local decisions on proposals for housing and housing developments. The state's housing market is increasingly unable to meet the needs of citizens to find adequate housing in communities where they want to live and work. This is frequently because owners and developers encounter resistance to building housing due to unnecessary regulations, onerous approval conditions, or unreasonable denials.

Overview

Owners and developers seeking to add housing to a New Hampshire community often encounter resistance in the form of unnecessary regulations, an onerous approval process, or unreasonable denials. They also face neighborhood opposition, which can use the appeals process to delay project development, sometimes for many years. That delay either adds significantly to the ultimate cost of development, or simply discourages housing construction.

At the same time, New Hampshire's housing market is increasingly unable to meet the needs of its citizens to find adequate housing in the communities where they want to live and work. The supply of housing is simply not keeping pace with demand, and this is making housing more expensive. To help diminish this counterproductive conflict of interests, the New Hampshire Housing Appeals Board was established in July 2020 to provide an alternative appeals process for local decisions on proposals for housing and housing developments.

The Housing Appeals Board: Beneficial for Communities and Developers

- 3-member board appointed by the NH Supreme Court
- Appeals can be brought by anyone with standing
- Provides an alternative to trial court for local decisions on housing and housing development
- Decision on the merits within 150 days from the appeal being filed
- Appeals of Board's decisions go to NH Supreme Court
- Designed to have no impact on local control
- Same standards of review as trial court

The NH Housing Appeals Board provides a faster, easier, and less expensive appeals mechanism for housing development proposals. It provides property owners and builders with an enhanced opportunity to appeal local decisions, without infringing on local control. No changes to local zoning are required, and there are no changes to the legal standards by which the decisions of local boards would be judged. The Housing Appeals Board is part of a truly

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“New Hampshire” solution to the problems of our housing market – and offers a solution which has national applicability.

Legislative Success by Building Coalitions, Partnerships and Relationships

In the fall of 2007, leaders of New Hampshire’s legislature asked NH Housing staff for ideas to help address the state’s growing problem of housing affordability. NH Housing responded with a list of four specific changes to law. Three of these – establishing the NH Workforce Housing Law, and laws enabling the establishment of local housing commissions and municipal affordable housing revolving funds – were achieved within a year. The final objective – establishing an alternative, more efficient method for dealing with appeals of local regulatory decisions regarding housing – would not come to fruition until 2020.

The opportunity to propose the Housing Appeals Board idea presented in the summer of 2018. NH Housing staff drafted legislation that would become, after two years of rigorous advocacy, the state’s Housing Appeals Board. Working with other housing advocates, NH Housing staff assembled a bipartisan legislative coalition that saw two state senators (their chamber’s most conservative and most liberal members) testifying side-by-side on the importance of this legislation.

Joining with the legislative team was a host of allies, including leaders of the state’s business community, developers, and housing advocates, all of whom spoke to the need to change how appeals were made to local regulatory decisions. Developers recounted stories of being stuck in court for two years on appeals of local planning board and zoning board decisions. While they might ultimately prevail, the developers spoke of the extraordinary cost of litigation, much of which came from the delays inherent in the trial process. Others said that some municipalities maintained a “so sue us” posture, which had the effect of deterring many developers from pursuing projects in those communities.

From these discussions arose the idea of the Housing Appeals Board, an impartial panel using the same legal standards as trial court, but compelled by strict statutory limits to decide cases within 150 days of the filing of an appeal. Its three members are appointed by the state’s supreme court, making it a non-political body. All three members must demonstrate their qualifications as subject matter experts in land use law and/or housing development; one must be an attorney, and another must be either a civil engineer or a land surveyor.

The NH Housing Appeals Board is designed to have no direct impact on local control of the land use decision-making process. The Board does not have the power to override local zoning or other land use regulations, and it does not have the full equitable powers of a court to rule on the constitutionality of matters. The strength of the Housing Appeals Board comes from its ability to quickly hear matters that challenge the appropriateness of a local land use board’s decisions when measured against that board’s own standards and against the standards of

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state law. In short, the Housing Appeals Board stands as a check against arbitrary and capricious behavior by local decision makers.

Positive Impact, Innovative and Replicable

In its very first decision, in April 2021, the Housing Appeals Board found that a local planning board had failed to provide any factual basis for denying a four-lot residential subdivision proposal. The planning board members instead imposed their opinions, finding that the development proposal was contrary to the town’s master plan, an advisory document. In reversing the planning board’s decision, the Housing Appeals Board said that the opinions of the planning board members, while relevant, were legally insufficient to support a decision: “Generalized concerns of noncompliance which are not specifically itemized in the Town’s zoning ordinance or Planning Regulations do not constitute a viable and reasonable basis for plan denial.” (Shattuck v. Town of Frankestown, NH Housing Appeals Board, PBA-2021-01)

The Housing Appeals Board has followed this with a total of 20 decisions, with another 20 cases pending. Despite the forcefulness of its first decision in reversing a local denial, the Housing Appeals Board has subsequently been very even-handed in its decisions, consistently relying on its power to remand decisions for further local action – subject to clear instructions on how to do things better the second time around. This has demonstrated that the Housing Appeals Board, in addition to serving as an efficient vehicle for appeals of local decisions, is also very interested in improving the quality of local decisions on development proposals.

The NH Housing Appeals Board has been favorably reviewed in national publications, such as *Governing Magazine*¹. A researcher for the Manhattan Institute for Policy Research described the NH Housing Appeals Board as a “a light-touch, small-government approach to state land-use policy”:

“Another advantage of HAB is that it does not require a large state administrative bureaucracy to create and enforce land-use policy...By using an individual appeals process, HAB does not intervene unless there is a real, live controversy. Ultimately, HAB is a relatively light-touch intervention that is quick, easy, and inexpensive to set up. While larger states will have more disputes than New Hampshire does, HAB’s approach is scalable enough to be replicable across the country.”²

¹ When Governments’ Barriers to Housing Step Over the Line, *Governing Magazine*, May 20, 2021 (<https://www.governing.com/community/when-governments-barriers-to-housing-step-over-the-line>).

² New Hampshire’s Housing Appeals Board: A Surgical Approach to State Land-Use Intervention. Manhattan Institute for Policy Research, May 11, 2021 (<https://www.manhattan-institute.org/new-hampshires-housing-appeals-board-state-land-use>).