

# *MEMORANDUM*

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Date: March 30, 2015

To: Madbury Planning Board

From: Jack Mettee, AICP  
Mettee Planning Consultants

Re: Site Plan Approval Period

At the last meeting of the Board, it was pointed out that the expiration time for a Site Plan approval was just 13 months and that it might be more reasonable to extend this time frame. Such issues as state permitting times; proper financing; etc. might be such that initiating a project in just 13 months could be restrictive for the applicant. The Board suggested extending this period to 18-months. It was also pointed out that there was a period of time in the RSA's whereby an approved plan would not be subject to any changes to the town's land use regulations. The Board asked me to research these issues and prepare a memo to the Board.

In researching both these issues in the state planning enabling statutes, I determined the following:

- A. There is a 5-year exemption that applies to any approved plan (subdivision or site plan) whereby the approved plan is not subject to any local changes in any land use regulations (zoning, subdivision, site plan) for a period of 5 years after the approval. NH RSA 674:39, I (See Attachment A); and
- B. There must be active and substantial development on the site by the owner within 24 months after the date of approval or in accordance with the terms of approval. NH RSA 674:39, I, a (See Attachment A).
- C. The state statutes (NH RSA 676:4; See Attachment A) establish very specific circumstances under which revocation of a recorded plan approval can take place including not adhering to the time periods specified in NH RSA 674:39.

I would recommend that the Board reconsider the language in the current Site Plan Regulations for Expiration under Article XI as well as the suggested language that the Board discussed for expiration (18 months) at our last meeting. I believe the RSA language could be referenced in the regulations whereby the 24-month period from the time of approval to time of active development would be acceptable unless there is a provision otherwise at time of approval.

I have provided some draft language for Article XI that could be used as a starting point. I have also added proposed language for several new sections for Board consideration, including one on Revocation of the Site Plan. Text to be eliminated is in strikethrough and added text is in yellow shading.

# Proposed Revised Article XI

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## Article XI Administrative Provisions

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### ~~Section 1. EXPIRATION OF APPROVALS~~

~~Site Plan approvals shall expire thirteen months after issuance of said approval by the Planning Board. The Planning Board may grant extension(s) of site plan approvals, if in the Board's judgment, good reason therefore is shown.~~

### **Section 1. RECORDING OF FINAL SITE PLAN—NEW SECTION 1**

Upon a vote by a majority of the Planning Board to approve a site plan, the application shall be deemed to have final approval and the site plan shall be signed by the Chairman of the Board. The signed plan shall be recorded in the Strafford County Registry of Deeds (SCRD) within thirty days of the signing of the plan. The Planning Board, by vote, may extend the filing period for good cause.

*Note: New language for the Board's consideration. Documents approval and recording procedure.*

### ~~Section 2. WAIVERS~~

~~The proposed development shall conform to the Zoning Ordinance of the Town of Madbury. Where strict conformity to these Site Plan Review Regulations would cause undue hardship or injustice to the applicant, a subdivision plan substantially in conformity with regulations may be approved by the Board provided that the spirit of the Regulations and public convenience and welfare will not be adversely affected. Such approval shall require a 2/3 vote of the entire Board.~~

### **Section 2. SITE PLAN CONDITIONS OF APPROVAL—NEW SECTION 2**

All terms of a conditional approval shall be completed to the satisfaction of the Chairman prior to signing of the plan by the Chairman and within six months of the Planning Board's affirmative vote of conditional approval. Plans, which have not satisfied the conditions of approval within this time period, shall be null and void. In addition to local approvals, the applicant shall be responsible for showing evidence of having obtained such state and federal permits as may be applicable.

*Note: New language for the Board's consideration. Document sign off on conditions of approval.*

### **Section 3. WAIVERS—REPLACES CURRENT SECTION 2**

The proposed development shall conform to the Zoning Ordinance of the Town of Madbury. Where strict conformity to these Site Plan Review Regulations would cause undue hardship or injustice to the applicant, a subdivision plan substantially in conformity with regulations may be approved by the Board provided that:

- A. The spirit of the Regulations and public convenience and welfare will not be adversely affected.
- B. The waiver shall achieve the Purpose of the regulations;
- C. The waiver is requested in writing;
- D. The Planning Board formally votes on such waiver; and
- E. The waiver is noted on the final approved plan.

Such approval shall require a 2/3 vote of the entire Board.

*Note: New language for waivers. Identifies circumstances for waiver and procedure for approval of a waiver. Not sure why a 2/3 vote is necessary, but I would suggest deleting, esp. since RSA's require majority vote (RSA 674:44, e).*

*Possible new introductory paragraph for Waivers. I believe this proposed language is cleaner, but current language is fine. E.g., Current first sentence is probably not necessary.*

*Where the Planning Board finds that unnecessary hardship may result from strict compliance with these regulations with respect to a particular tract of land, the Board may modify or waive these regulations so that substantial justice may be done and the public interest secured, provided that:*

**Section 3. EXPIRATION OF APPROVED SITE PLANS –Replaces current Section 1.**

Site Plan approvals become vested from subsequent changes to the Zoning Ordinance and Non-Residential Site Plan Review Regulations in accordance with RSA 674:39, I.

**Section 4. REVOCATION OF APPROVED SITE PLANS—New Section 4**

In accordance with RSA 676:4-a, *Revocation of Recorded Approval*, a plat, street plat, site plan or other approval which has been filed with the appropriate recording official, under RSA 674:37, *Recording of Plats*, may not be revoked by the Planning Board in whole or in part except as detailed in the statute.

**Section 5. AMENDMENTS—Replaces current Section 3.**

These regulations may be amended or rescinded by the Planning Board but only following public hearing on the proposed change. ~~The Chairman or Secretary of the Planning Board shall transmit a record of any changes so authorized to the Strafford County Registry of Deeds.~~

*Note: This statement is not necessary and not consistent with RSA's*

**Section 6. VALIDITY— Replaces current Section 4**

If any Article, section, subsection, sentence, clause or phrase of these Regulations is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portion of these Regulations.

**Section 5. EFFECTIVE DATE— Replaces current Section 5.**

These Regulations shall take effect after passage by the Madbury Planning Board.

***Attachment A***  
**LOCAL LAND USE PLANNING AND REGULATORY POWERS**  
**Regulation of Subdivision of Land**  
**Section 674:39**

**674:39 Five-Year Exemption. –**

I. Every subdivision plat approved by the planning board and properly recorded in the registry of deeds and every site plan approved by the planning board and properly recorded in the registry of deeds, if recording of site plans is required by the planning board or by local regulation, shall be exempt from all subsequent changes in subdivision regulations, site plan review regulations, impact fee ordinances, and zoning ordinances adopted by any city, town, or county in which there are located unincorporated towns or unorganized places, except those regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements, for a period of 5 years after the date of approval; provided that:

(a) Active and substantial development or building has begun on the site by the owner or the owner's successor in interest in accordance with the approved subdivision plat within 24 months after the date of approval, or in accordance with the terms of the approval, and, if a bond or other security to cover the costs of roads, drains, or sewers is required in connection with such approval, such bond or other security is posted with the city, town, or county in which there are located unincorporated towns or unorganized places, at the time of commencement of such development;

(b) Development remains in full compliance with the public health regulations and ordinances specified in this section; and

(c) At the time of approval and recording, the subdivision plat or site plan conforms to the subdivision regulations, site plan review regulations, and zoning ordinances then in effect at the location of such subdivision plat or site plan.

II. Once substantial completion of the improvements as shown on the subdivision plat or site plan has occurred in compliance with the approved subdivision plat or site plan or the terms of said approval or unless otherwise stipulated by the planning board, the rights of the owner or the owner's successor in interest shall vest and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect such improvements.

III. The planning board may, as part of its subdivision and site plan regulations or as a condition of subdivision plat or site plan approval, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project:

(a) "Substantial completion of the improvements as shown on the subdivision plat or site plan," for purposes of fulfilling paragraph II; and

(b) "Active and substantial development or building," for the purposes of fulfilling paragraph I.

IV. Failure of a planning board to specify by regulation or as a condition of subdivision plat or site plan approval what shall constitute "active and substantial development or building" shall entitle the subdivision plat or site plan approved by the planning board to the 5-year exemption described in paragraph I. The planning board may, for good cause, extend the 24-month period set forth in subparagraph I(a).

**Source.** 1983, 447:1. 1989, 266:17, 18. 1991, 331:1, 2. 1995, 43:5; 291:7, 8. 2004, 199:1, eff. June 7, 2004. 2009, 93:1, eff. June 12, 2009. 2011, 215:1, eff. June 27, 2011.

**TITLE LXIV PLANNING AND ZONING**  
**CHAPTER 676**  
**ADMINISTRATIVE AND ENFORCEMENT PROCEDURES**  
**Planning Board**  
**Section 676:4-a**

**676:4-a Revocation of Recorded Approval. –**

I. A subdivision plat, street plat, site plan or other approval which has been filed with the appropriate recording official under RSA 674:37 may not be revoked, in whole or in part, by the planning board, except pursuant to this section, and only under the following circumstances:

(a) At the request of, or by agreement with, the applicant or the applicant's successor in interest.

(b) When the applicant or successor in interest to the applicant has performed work, erected a structure or structures, or established a use of land, which fails to conform to the statements, plans or specifications upon which the approval was based, or has materially violated any requirement or condition of such approval.

(c) When the applicant or successor in interest to the applicant has failed to perform any condition of the approval within a reasonable time specified in the approval, or, if no such time is specified, within the time periods specified in RSA 674:39.

(d) When the time periods specified in RSA 674:39 have elapsed without any vesting of rights as set forth therein, and the plat, plan or other approval no longer conforms to applicable ordinances or regulations.

(e) When the applicant or successor in interest to the applicant has failed to provide for the continuation of adequate security as provided by RSA 674:36, III(b) and 674:44, III(d) until such time as the work secured thereby has been completed.

II. Prior to recording any revocation under this section, the planning board shall give notice, as provided by RSA 676:4, I(d), to the public, the applicant or the applicant's successor in interest, and all abutters and holders of conservation, preservation, or agricultural preservation restrictions. The notice shall include the board's reasons for the revocation. A hearing with notice as provided in RSA 676:4, I(d) shall be held at the request of any party receiving such notice, submitted within 30 days of receiving such notice, or if the planning board determines to hold a hearing.

III. A declaration of revocation, dated and endorsed in writing by the planning board, and containing reference to the recording information for the plat, plan or other approval being revoked, shall be filed for recording with the register of deeds, no sooner than 30 days after written notification of the revocation is served on the applicant or the applicant's successor in interest, in person or by certified mail, or 30 days after any public hearing, whichever is later. If only part of an approval is revoked, that portion of land subject to revocation shall be clearly identified in the declaration. The declaration shall be recorded under the same name or names as was the original approval, as well as the names of subsequent owners, if any, of the land or part thereof subject to revocation, as identified by the municipality.

IV. A revocation under this section may be appealed pursuant to RSA 677:15. Nothing in this section shall affect the municipality's ability, either before or after such a revocation, to pursue other remedies or penalties as set forth in RSA 676:15-17.

**Source.** 1991, 237:1. 1997, 142:5, eff. Aug. 8, 1997.