

From: legalinquiries [mailto:legalinquiries@nhmunicipal.org]
Sent: Wednesday, July 16, 2014 1:40 PM
To: Robyn Payson
Subject: Hillsborough: Questions as we develop the ZBA Rules of Procedure

Ms. Payson:

While RSA 676:7 (II) stipulates that the public hearing shall be held within 30 days of the receipt of the notice of appeal (or application), failure to abide by this deadline does not result in automatic approval of the application. Telling citizens that the ZBA meets on a regularly scheduled day each month, and that in order to be placed on the agenda for any particular month the application must be received by a specific deadline makes a great deal of sense and promotes predictability. If you did not have a set day for ZBA hearings, the date for ZBA hearings would be dictated by the date of receipt of the application, that that would result in random ZBA meeting dates which would be a burden to the ZBA members and the staff. Your proposed schedule for application deadlines and ZBA meeting dates is reasonable and legal.

If a ZBA applicant elects to have a board of four consider an application, and the vote is 2 in favor and 2 opposed the application is deemed denied. See, RSA 674:33 (III). Once a variance is denied (and all rehearings and appeals exhausted) the ZBA cannot consider or grant an application for the same variance unless there is a material change in circumstances concerning the content of the application or the circumstances of the neighborhood where the subject property is located. Fisher v. Dover, 120 NH 187 (1980). The applicant should be cautioned that if the applicant proceeds with a Board of fewer than five members the risk of not prevailing and being barred from making the same variance application in the future is on the applicant. There are no do overs.

Concerning tape recordings of ZBA meetings, NH RSA 33-A:3-a addresses this issue. That statute provides a comprehensive list of documents that must be retained by the Town and for how long. Paragraph LXXX states that at a minimum tape recordings of public meetings only need to be retained by the Town until the written record is approved, and as soon as minutes are approved, either reuse the tape or dispose of the tape. So whether Hillsborough wants to retain the tape recordings ZBA meetings after the minutes for that meeting are approved, that would be a local option and is not required Disposition of Municipal Records statute.

Sincerely,

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