

# Senate Commerce Committee

*Aaron Jones 271-2609*

**SB 78**, relative to the zoning board of adjustments appeal period.

**Hearing Date:** January 28, 2025

**Time Opened:** 10:07 a.m.

**Time Closed:** 10:18 a.m.

**Members of the Committee Present:** Senators Innis, Ricciardi, Murphy, McGough, Fenton and Reardon

**Members of the Committee Absent :** None

**Bill Analysis:** This bill removes the zoning board of adjustment's discretion for determining when to take an appeal and replaces it with a non-discretionary 30-day period.

---

**Sponsors:**

Sen. Murphy  
Sen. McGough  
Rep. Osborne

Sen. Innis  
Rep. Pauer

Sen. Perkins Kwoka  
Rep. Alexander Jr.

---

**Who supports the bill:** Senator Keith Murphy, Senator Tim McGough, Representative Diane Pauer, Daniel Richardson, Jesse Medeiros, Curtis Howland, Lois Cote, Curtis Register, Aubrey Freedman, Natch Greyes (BIA), Chris Norwood (NH Realtors), Rob Dapice (NH Housing), Matt Mayberry (NH Home Builders), Dawn McKinney (NH Legal Assistance)

**Who opposes the bill:** Brodie Deshaies (NHMA), Audrey Cline, Jane Aitken

**Who is neutral on the bill:** No one

**Summary of testimony presented in support:**

***Senator Keith Murphy***

- This bill would standardize what is practiced among most towns for zoning board of adjustment appeals.
- Senator Murphy said some communities have taken advantage of the flexibility given by the phrase “reasonable.”
- One issue with building throughout the state has been the wide differences from town to town, and this bill sought to make it more consistent from jurisdiction to jurisdiction.

***Chris Norwood, 2025 Vice Chair of the Public Policy Committee, New Hampshire Realtors Association***

- Typically, the standard has been a 30-day appeal period for planning and zoning decisions, which has been codified in case law and various zoning ordinances.
- Mr. Norwood said administrative appeals for building permits for construction are more complicated. Some municipalities, such as Bedford, provide 30 days in their ordinance. Amherst, however, has used the definition for “reasonable” that is outlined in RSA 674:33.
- This bill would codify the 30-day appeal period to standardize the time an aggrieved party could appeal a building permit.
- In the 1990s, the Supreme Court heard a case where construction was delayed up to 2 years after an aggrieved party appealed a permit after 55 days. The owner of the property prevailed, and the Court determined it was unreasonable.
- Mr. Norwood said individuals who would like to build housing units believed “reasonable” has been too vague, and they do not want an attorney to go with them to their local ZBA office.
- By standardizing the process across the state, all parties would be provided with certainty.

**Summary of testimony presented in opposition:**

***Brodie Deshaies, Legislative Advocate, New Hampshire Municipal Association***

- This bill would remove the flexibility of the appeals process, which would hurt ZBAs and abutters.
- Abutters are defined in RSA 672:3, and there are instances where ZBAs want flexibility or additional time for summer residents to know about the changes being made to a property during the zoning process. Those individuals may want to appeal a decision or attend a public hearing, and the 30-day period would not allow communities to use their discretion to meet the needs of their residents.
- **Senator Ricciardi** said “reasonable” was subjective, and she asked if there were any suggestions to rectify the issue while keeping in mind snowbird residents.
  - **Mr. Deshaies** said the Association provides education to local ZBAs to ensure ordinances are reasonable. It is also on residents, who are interested in additional developing or planning, to educate their ZBAs to ensure ordinances are not open-ended or they have additional criteria. In small communities, it can be difficult to have a quorum, which is why communities should tailor the best solution to their own needs and their residents.
- **Senator McGough** asked what was reasonable, and when would it become unreasonable.

- **Mr. Deshaies** said it was dependent on the municipality, the case, and how long it would take to find facts during the appeals process. Providing a definitive number depended on how much support came from the planning department and code enforcement officers. Other communities rely on circuit riders who might not provide advice until later in the month.
- **Senator McGough** asked if that would be why they needed a number because reasonableness depended on the conduct of a party, the complexity of a case, and the underlying intent of the parties.
  - **Mr. Deshaies** stated that some communities need flexibility to ensure the process has been done properly as well as ensure property owners, residents, and abutters have been given a fair shake.
- **Senator Fenton** asked what if language was included to allow a snowbird, for example, an extension of time for an appeal.
  - **Mr. Deshaies** said ZBAs may need to extend their own deadlines in cases where they are unable to form a quorum, or they share the same planner who might not be around for 15 or 21 days. This bill did not consider the flexibility that municipalities and ZBAs needed. He said he would be happy to review language; however, he was unsure that a set number would meet the needs of municipalities, residents, and the ZBAs.

**Neutral Information Presented:** None

AJ  
Date Hearing Report completed: February 7, 2025