Amendment to HB 1629-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Local Land Use Boards; Training. Amend RSA 673:3-a to read as follows:

673:3-a Training. [Within the first year of assuming office, a new] Any member of a zoning board of adjustment or planning board may complete training offered by the office of strategic initiatives or another organization that provides similar training covering the processes, procedures, regulations, and statutes related to the board on which the member serves. [The office of strategic initiatives may provide this training, which may be designed in a variety of formats including, but not limited to, web-based, distance learning, traditional classroom style, or self study.] The office of strategic initiatives shall develop standard self-training materials and corresponding tests for zoning boards of adjustment and planning boards which shall be provided to members free of charge. The office of strategic initiatives may provide other types of training, which may be designed in a variety of formats including, but not limited to, web-based, distance learning, or traditional classroom style. For purposes of this section, the term "member" includes regular and alternate members of zoning boards of adjustment and planning boards.

2 New Paragraph; Local Land Use Boards; Staff; Finances. Amend RSA 673:16 by inserting after paragraph II the following new paragraph:

III. Any fee which a city or town imposes on an applicant pursuant to this title shall be published in a location accessible to the public during normal business hours. Any fee not published in accordance with this paragraph at the time an applicant submits an application shall be considered waived for purposes of that application. A city or town may comply with the requirements of this section by publicly posting a list of fees at the city or town hall or by publishing a list of fees on the city or town’s Internet website.

3 Local Land Use Planning and Regulatory Powers; Innovative Land Use Controls. Amend RSA 674:21, II to read as follows:

II.(a) An innovative land use control adopted under RSA 674:16 may be required when supported by the master plan and shall contain within it the standards which shall guide the person or board which administers the ordinance. An innovative land use control ordinance may provide for administration, including the granting of conditional or special use permits, by the planning board,
board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate. If the administration of the innovative provisions of the ordinance is not vested in the planning board, any proposal submitted under this section shall be reviewed by the planning board prior to final consideration by the administrator. In such a case, the planning board shall set forth its comments on the proposal in writing and the administrator shall, to the extent that the planning board's comments are not directly incorporated into its decision, set forth its findings and decisions on the planning board's comments.

(b) If a municipality allows an increased density, reduced lot size, expedited approval, or other dimensional or procedural incentive under this section for the development of housing for older persons, as defined and regulated pursuant to RSA 354-A:15, it shall allow the same incentive for the development of workforce housing as defined in RSA 674:58, IV. Beginning July 1, 2021, incentives established for housing for older persons shall be deemed applicable to workforce housing development, regardless of whether a local land use ordinance or regulation specifically provides for their application to workforce housing development.

IV. Local Land Use Planning and Regulator Powers; Innovative Land Use Controls. Amend RSA 674:21, IV(a) to read as follows:

IV. As used in this section:

(a) "Inclusionary zoning" means land use control regulations which require a property owner to produce, as part of a development which meets certain characteristics, housing units which are affordable to persons or families of low and moderate income or provide a voluntary incentive or benefit to a property owner in order to induce the property owner to produce housing units which are affordable to persons or families of low and moderate income. Inclusionary zoning includes, but is not limited to, density bonuses, growth control exemptions, and a streamlined application process. Inclusionary zoning ordinances shall include standards that do not reduce the economic viability of developments in comparison to developments that do not require housing affordability. Such ordinances shall also enable the planning board to waive or modify in individual cases any standards that are demonstrated by an applicant to reduce the economic feasibility of a development.

V. Planning and Zoning; Administrative and Enforcement Procedures; Issuance of Decision. Amend RSA 676:3, I to read as follows:

I. The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15,
unless the court determines that there are other factors warranting the disapproval. If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.

6 New Paragraph; Powers of Zoning Board of Adjustment. Amend RSA 674:33 by inserting after paragraph VII the following new paragraph:

VIII. Upon receipt of any application for action pursuant to this section, the zoning board of adjustment shall begin formal consideration and shall approve or disapprove such application within 90 days of the date of receipt, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable. If a zoning board of adjustment determines that it lacks sufficient information to make a final decision on an application, the board may, in its discretion, deny the application without prejudice, in which case the applicant may submit a new application for the same or substantially similar request for relief.

7 Workforce Housing; Definitions. Amend RSA 674:58, IV to read as follows:

IV. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than [100] 120 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce housing" also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, or are subject to age restrictions, shall not constitute workforce housing for the purposes of this subdivision.

8 Planning Board; Board's Procedures on Plats. Amend RSA 676:4, I(c) to read as follows:

(c)(1) The board shall, at the next regular meeting or within 30 days following the delivery of the application, for which notice can be given in accordance with the requirements of subparagraph (b), determine if a submitted application is complete according to the board's regulation and shall vote upon its acceptance. Upon determination by the board that a submitted application is incomplete according to the board's regulations, the board shall notify the applicant of the determination in accordance with RSA 676:3, which shall describe the information, procedure, or other requirement necessary for the application to be complete. Upon determination by the board that a submitted application is complete according to the board's regulations, the board shall begin formal consideration and shall act to approve, conditionally approve as provided in subparagraph (i), or disapprove within 65 days, subject to extension or waiver as provided in subparagraph (f). [Upon failure of the board to approve, conditionally approve, or disapprove the application, the selectmen or
city council shall, upon request of the applicant, immediately issue an order directing the board to
act on the application within 30 days. [If the board determines that it lacks sufficient
information to make a final decision on an application, the board may, in its discretion,
deny the application without prejudice, in which case the applicant may resubmit the same
or a substantially similar application. If the planning board does not act on the application
within that [30-day] 65-day time period, then [within 40 days of the issuance of the order,] the
selectmen or city council shall certify on the applicant's application that the plat is approved
pursuant to this paragraph [unless within those 40 days the selectmen or city council has identified
in writing some specific subdivision regulation or zoning or other ordinance provision with which the
application does not comply]. Such a certification, citing this paragraph, shall constitute final
approval for all purposes including filing and recording under RSA 674:37 and 676:18, and court
review under RSA 676:15.

(2) Failure of the selectmen or city council to [issue an order to the planning board
under subparagraph (1), or to] certify approval of the plat upon the planning board's failure to
comply with the order, act within the required time period shall constitute grounds for the
superior court, upon petition of the applicant, to issue an order approving the application [if the
court determines that the proposal complies with existing subdivision regulations and zoning or
other ordinances]. The superior court shall act upon such a petition within 30 days. If the
court determines that the failure of the selectmen or the city council to act was not justified, the
court may order the municipality to pay the applicant's reasonable costs, including attorney's fees,
incurred in securing such order.

9 Planning Board; Board's Procedures on Plats. Amend RSA 676:4, I(f) to read as follows:

(f) [The planning board may apply to the selectmen or city council for an extension not to
exceed an additional 90 days before acting to approve or disapprove an application.] The applicant
may waive the requirement for planning board action within the time periods specified in
subparagraph (c) and consent to such extension as may be mutually agreeable.

10 Planning and Zoning; Rehearing and Appeal Procedures; Court Review. Amend RSA 677:15,
IV to read as follows:

IV. [The court shall give any hearing under this section priority on the court calendar.] Whenever an appeal to the superior court is initiated under this section, the court shall
give the appeal priority on its calendar and shall issue a final decision within 120 days of
the date upon which a certiorari order was delivered to the planning board pursuant to
paragraph II. If the court stays an appeal pursuant to subparagraph I(b), then it shall
issue a decision within 120 days of final resolution of all matters before the board of
adjustment.

11 Planning and Zoning; Rehearing and Appeal Procedures; Priority. Amend RSA 677:5 to read
as follows:
677:5 Priority. [Any hearing by the superior court upon an appeal under RSA 677:4 shall be given priority on the court calendar.] Whenever an appeal to the superior court is initiated under RSA 677:4, the court shall give the appeal priority on its calendar and shall issue a final decision with 120 days of the date upon which the petition was served on the zoning board of adjustment or local legislative body.

12 New Subdivision; Fee Shifting and Posting of Bond. Amend RSA 677 by inserting after section 19 the following new subdivision:

   Fee Shifting and Posting of Bond

677:20 Fee Shifting and Posting of Bond.

   I. Whenever an appeal to the superior court is initiated under this chapter, the court may in its discretion require the person or persons appealing to file a bond with sufficient surety for such a sum as shall be fixed by the court to indemnify and save harmless the person or persons in whose favor the decision was rendered from damages and costs which he or she may sustain in case the decision being appealed is affirmed.

   II. In any appeal initiated under this chapter the court may, subject to the provisions of this paragraph or any other provision of law, award attorney's fees and costs to the prevailing party. Costs and attorney's fees shall not be allowed against a local land use board unless it shall appear to the court that the board, in making the decision from which the appeal arose, acted with gross negligence, in bad faith, or with malice. Costs and attorney's fees shall not be allowed against the party appealing from the decision of a local land use board unless it shall appear to the court that said party acted in bad faith or with malice in appealing to court.

13 Effective Date. This act shall take effect January 1, 2021.
AMENDED ANALYSIS

This bill provides for free training materials for members of a zoning board of adjustment or planning board, modifies the appeals process for zoning decisions, and provides for fee shifting and posting of bond in appeals to superior court from decisions of boards of adjustment.