

TOWN OF MADISON, NH

PROCEDURAL GUIDANCE RE: RSA 674:41

ISSUANCE OF BUILDING PERMITS ON CLASS VI AND PRIVATE ROADS

PURPOSE:

Under RSA 674:41 the Board of Selectmen has the discretion, after review and comment by the Planning Board, to authorize the issuance of building permits for lots that are accessed from Class VI Roads and/or Private Roads.

The Board of Selectmen has developed these guidelines to help provide a uniform decision-making process when it is presented with an application for a building permit for a property accessed from a Class VI Road or a Private Road. RSA 674:41, attached as Appendix A, is not intended to prohibit development but to ensure it is done responsibly. The Board of Selectmen may issue building permits on Class VI and Private Roads when it is demonstrated by an applicant, and approved by the Board of Selectmen after review and comment by the Planning Board, that any building(s) constructed pursuant to issuance of such permits will meet state building code requirements, do not constitute scattered and premature development, and will not have a negative impact upon the Town.

The purpose of these guidelines is to ensure that any structures built on Class VI Roads and Private Roads are reasonably accessible throughout each year. With adequate access, the safety and security of people occupying or using those structures, and the structures themselves, will not be unreasonably placed at risk, the safety of emergency response personnel or their vehicles and equipment will not be unreasonably endangered, and service, delivery and school vehicles will have safe and reasonable access. It is intended that the Boards involved in these determinations will consider any and all factors they deem relevant to the review of a building permit application request. Therefore, this statement of purpose is not intended to be an exhaustive list of factors that may be taken into account when reviewing an application.

BASIC STATUTORY INTENT:

RSA 674:41(I) regulates the placement of new buildings and issuance of building permits based on the status of the street giving access to a particular lot and building (see Definition section to follow). Since the Madison Planning Board has been granted platting jurisdiction, a building permit may be issued and building erected where the street giving access to the lot:

- is a Class V or better road that attained that status prior to the time when the local planning board existed with subdivision authority;
- is shown on an official map;
- is on an approved subdivision plat;
- is on an adopted street plat;

- is reviewed by the planning board and accepted by a vote of the legislative body. A majority vote required if the planning board approves but a 2/3 vote is required if it does not approve;
- is a Class VI road if the governing body policy permits;
- is a private road if the governing body policy permits.

Deciding when and where a building may be erected pursuant to the statute is only part of the equation. New development inevitably raises questions of road quality and maintenance, emergency services access, general liability, and in some cases, a change in the character of an area.

DEFINITIONS:

Road Giving Access – Means the road where the lot has frontage and that frontage has the primary driveway for the lot. “Road giving access” does not mean the driveway upon the lot unless that driveway services another lot.

Private road – A strip of land over which one or more individuals has the right to pass in a highway vehicle, and which is not a Class I through VI highway and is not an Official Trail.

Class I through III Highway – State public roads which are maintained by the state. See RSA 229:5 for exact definition.

Class IV and V Highway – Town public roads which are maintained by the town. See RSA 229:5 for exact definition.

Class VI highway – All other existing public ways that are NOT maintained by the town. A Class VI highway is a public way in every respect except town maintenance. See RSA 229:5 for exact definition.

Official Trail – Means a state or municipal trail legally established per RSA 216-F, RSA 230:74 & 75, or RSA231-A.

SPECIFIC DUTIES, RESPONSIBILITIES & PROCEDURAL REQUIREMENTS:

1. Code Enforcement Officer

- Upon receiving a building permit application for construction of any kind on a lot accessed from a Class VI Road or a Private Road, the Code Enforcement Officer shall issue a Building Permit Denial and will forward a copy of the application to the Town Administrator. The Building Permit Denial will be placed on the agenda for the next available Board of Selectmen’s meeting for determination of whether Planning Board review and comment is required per RSA 674:41.

2. Board of Selectmen

- The Board of Selectmen will vote on the applicability of RSA 674:41 after determining the nature of the access to the lot related to the building permit in question.
- Upon determining the applicability of RSA 674:41 and that Planning Board review and comment is required, the Board of Selectmen will make a written request for the Planning Board’s review and comment on the application.
- A copy of all relevant material provided with the building permit application will be forwarded to the Planning Board for review.

- D. A copy of any meeting minutes where the building permit application was discussed will also be sent to the Planning Board for review.

3. Planning Board

- A. The Board of Selectmen will request the Planning Board to have the building permit application placed on the Planning Board agenda for review and comment at the next regularly scheduled meeting. Planning Board members may make individual site visits to review road conditions in order for the Planning Board to subsequently provide written comments to the Board of Selectmen.
- B. The Town Administrator, after receipt of the written comments from the Planning Board, will place the item on the next Board of Selectmen's meeting agenda for a determination (in the form of a Selectmen's Administrative Decision) on whether or not the building permit can be issued by the Code Enforcement Officer.

4. Applicant

- A. If the Selectmen authorize the issuance of the building permit, the applicant shall provide the Town with an executed Class VI Road Waiver of Liability Form or Private Road Waiver of Liability Form to be recorded at the Carroll County Registry of Deeds to the effect that the Town of Madison neither assumes responsibility for maintenance of the Class VI Road or Private Road nor liability for damages resulting from the use thereof, pursuant to RSA 674:41, I (c)(3) and I (d)(3). The Waiver of Liability shall be recorded at the expense of the applicant and such recording must occur PRIOR to the issuance of the building permit by the Code Enforcement Officer.
- B. Should the Board of Selectmen grant approval for applications under these guidelines, applicants are still required to secure any other permits required under local, state or federal law or regulations. The Board of Selectmen's approval does not supersede any other requirements by other entities with jurisdictional authority.
- C. If the Selectmen determine that the building permit cannot be issued, a formal Administrative Decision citing the denial will be issued to the applicant, who may then appeal the Selectmen's Administrative Decision to the Zoning Board of Adjustment.

5. Code Enforcement Officer

- A. The Code Enforcement Officer must have a copy of the recorded Class VI Road or Private Road Waiver of Liability Form PRIOR to issuing the building permit.
- B. Applicants receiving approval from the Board of Selectmen under these guidelines must apply for and be issued a building permit within one year of the Board of Selectmen's Conditional Approval, and construction must begin within one year from the date of issuance of the building permit or the approved Application to build on a Class VI road or Private road will expire and become void.

APPENDIX A

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 **LOCAL LAND USE PLANNING AND REGULATORY POWERS**

Regulation of Subdivision of Land

Section 674:41

674:41 Erection of Buildings on Streets; Appeals. –

I. From and after the time when a planning board shall expressly have been granted the authority to approve or disapprove plats by a municipality, as described in RSA 674:35, no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed:

(a) Shall have been accepted or opened as, or shall otherwise have received the legal status of, a class V or better highway prior to that time; or

(b) Corresponds in its location and lines with:

(1) A street shown on the official map; or

(2) A street on a subdivision plat approved by the planning board; or

(3) A street on a street plat made by and adopted by the planning board; or

(4) A street located and accepted by the local legislative body of the municipality, after submission to the planning board, and, in case of the planning board's disapproval, by the favorable vote required in RSA 674:40; or

(c) Is a class VI highway, provided that:

(1) The local governing body after review and comment by the planning board has voted to authorize the issuance of building permits for the erection of buildings on said class VI highway or a portion thereof; and

(2) The municipality neither assumes responsibility for maintenance of said class VI highway nor liability for any damages resulting from the use thereof; and

(3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds; or

(d) Is a private road, provided that:

(1) The local governing body, after review and comment by the planning board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof; and

(2) The municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and

(3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought; or

(e) Is an existing street constructed prior to the effective date of this subparagraph and is shown on a subdivision plat that was approved by the local governing body or zoning board of adjustment before the municipality authorized the planning board to approve or disapprove subdivision plats in accordance with RSA 674:35, if one or more buildings have been erected on other lots on the same

street.

II. Whenever the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and when the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets, the applicant for such permit may appeal from the decision of the administrative officer having charge of the issuance of permits to the zoning board of adjustment in any municipality which has adopted zoning regulations in accordance with RSA 674, or, in municipalities in which no board of adjustment exists, to the local legislative body, or to a board of appeals, whichever is appropriate, in accordance with RSA 674:14 and 674:15, including the requirement for a public hearing. In a municipality which does not require building permits, direct application may be made to the zoning board of adjustment, or the local legislative body, or the board of appeals for permission to erect the building. In passing on such appeal or application, the board of adjustment, local legislative body, or board of appeals may make any reasonable exception and shall have the power to authorize or issue a permit, subject to such conditions as it may impose, if the issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based, and if erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality. Any such decision made in this connection by a board of adjustment, local legislative body, or by a board of appeals pursuant to this section and RSA 674:14 and 674:15 shall be in writing, together with the reasons for the decision, and shall be subject to review in the manner described in RSA 677.

II-a. Municipalities may except any lot, including island lots for islands served exclusively by boats, from the requirements of paragraphs I and II by an affirmative vote of the local legislative body pursuant to RSA 675, first submitted to the planning board for its approval and:

(a) If approved by the board, approved by a majority of those present and voting at a regular or special meeting of the local legislative body; or

(b) If disapproved by the planning board, approved by not less than 2/3 of those present and voting at a regular or special meeting of the local legislative body.

III. This section shall supersede any less stringent local ordinance, code or regulation, and no existing lot or tract of land shall be exempted from the provisions of this section except in accordance with the procedures expressly set forth in this section. For purposes of paragraph I, "the street giving access to the lot" means a street or way abutting the lot and upon which the lot has frontage. It does not include a street from which the sole access to the lot is via a private easement or right-of-way, unless such easement or right-of-way also meets the criteria set forth in subparagraphs I(a), (b), (c), (d), or (e).

IV. In addition to the requirements for the erection of buildings in paragraph I and notwithstanding the exceptions provided in paragraph II, the planning board for a county in which there are located unincorporated towns or unorganized places shall require every building which is erected on leased land located within an unincorporated town or unorganized place to have a building permit. A building permit shall be required under this paragraph regardless of the proximity of the building to any street or highway. The county shall, by resolution, authorize the planning board to issue building permits under this paragraph.

Source. 1983, 447:1. 1988, 131:2, 3. 1989, 266:20. 1995, 291:10. 1998, 344:6. 2002, 270:1, 5. 2004, 154:1, 2. 2005, 226:1, 2, eff. Sept. 3, 2005.