Multi-Family Residential Development on Commercially Zoned Land: *A Guide for Municipalities*

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

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Summary of Changes Pursuant to 2026 Chapter Law 329:6 (HB 1588) and Chapter Law 319 (HB 1010)

Amendments to RSA 674:80, updating and expanding requirements for Multi-Family Residential Development on Commercially Zoned Land and related legal changes:

2026 Chapter Law 329:6 (HB 1588) and Chapter Law 319 (HB 1010) amend RSA 674:80. Chapter Law 329:1 (HB 1588) amends 674:16 and Ch. 329:3 (HB 1588) establishes RSA 162-X.

RSA 674:80 has been significantly amended to expand requirements regarding mixed-use and multi-family developments. The current law requires municipalities to permit multi-family residential development on commercially zoned land and, where an existing building is being repurposed for adaptive reuse for residential purposes, municipalities are required to afford exemptions to setbacks, height or frontage of a building, provided the dimensional elements of the building do not change. The law has been primarily amended to limit municipalities' authority to regulate multi-family residential development on commercially zoned land and repurposing of existing buildings for adaptive reuse for residential purposes in their zoning ordinances. It was also amended to more clearly define what constitutes "adequate infrastructure" to sustain such a development, and what planning boards may require an applicant to do to demonstrate adequate infrastructure (more details below).

Effective Date: July 1, 2026 at 12:01 a.m.
Statutes Amended: RSA 674:80

RSA 674:16, VII has been amended to prohibit municipalities from requiring accessory residential parking spaces to be garaged. This provision further alters the extent to which municipalities may regulate parking. RSA 674:16, VII already prohibits municipalities from requiring more than one accessory residential parking space per unit, and RSA 674:16-a addresses permissible on-site and alternative parking requirements.

Effective Date: September 13, 2026
Statutes Amended: RSA 674:16, VII

A new chapter of law was also established, RSA 162-X, which permits the establishment of Special Assessment Districts to fund specific infrastructure improvements necessary to serve new development. Municipal governing bodies can establish a district after notice and a public hearing by entering into a special assessment memorandum with at least 60% of the affected properties' owners. Assessments may only be levied against properties that receive a "direct and ascertainable benefit" from the improvements being financed and may be collected in annual installments over a period of up to 20 years. This chapter is different from RSA 52-A, Special Assessment Districts, but serves a similar purpose.

Effective Date: September 13, 2026
New Chapter Adopted: RSA 162-X

2026 Chapter Law 329:6 (HB 1588) and Chapter Law 319 (HB 1010) amend RSA 674:80 (established by 2025 Chapter Law 210; HB 631) to do two key things: Expand the requirement for municipalities to allow mixed-use and multi-family development, and better define how a planning board can determine whether there is adequate infrastructure for those developments and what it may require the applicant to provide to prove adequate infrastructure exists.

What *Must* You Do?

Municipalities shall permit multi-family dwellings on commercially zoned land by right, provided that adequate infrastructure is available, in accordance with RSA 674:80. RSA 674:43, I defines a multi-family dwelling as "any structures containing more than 2 dwelling units." "Commercially zoned land" is defined in RSA 674:79 as land zoned for such commercial activities as retail and office space. For more information on how to interpret "commercially zoned land" please refer to NHMA's *Summary of Changes Pursuant to HB 631* (pg. 2).

"Adequate infrastructure" includes roads, water, and sewage systems, and the planning board may determine whether existing infrastructure is adequate. Municipalities must also allow an applicant to provide their own infrastructure if the existing infrastructure is not adequate and in accordance with all applicable regulations (more details below).

Municipalities must permit pre-existing nonconforming structures on land in zones that permit office and retail commercial uses to be converted to multi-family dwellings or mixed-use provided that the "structure's envelope is not altered to further violate the zoning district dimensional requirements." While this term is not defined, a "structure's envelope" likely means all of the pre-existing nonconforming commercial structure's existing external dimensions. It appears that the conversion must be permitted as long as the footprint, outer dimensions, and height of the building are not changed or do not further violate existing dimensional requirements in the zoning ordinance(s).

If an applicant proposing to convert a “commercially-zoned property” to “multi-family housing” (presumably a multi-family dwelling) is “improperly denied” or their proposal is “subjected to requirements beyond those allowed in [RSA 674:80],” and the applicant successfully sues the municipality, then the municipality must reimburse the applicant with reasonable attorney’s fees.

Although the terminology is not exactly the same in both sections of the law, it seems reasonable to conclude that “commercially zoned property” as used in RSA 674:80 refers to the same thing as “commercially zoned land” defined in RSA 674:79, I. “Commercially zoned land” is defined as “land zoned for such commercial uses as retail and office space.” While the definition of “commercial” uses may vary from one zoning ordinance to another, municipalities will need to determine if retail and office space (or similar uses) are permitted on a specific lot. Then, if those commercial activities are permitted, the municipality will then need to consider if in denying an applicant: 1. The denial was improper; and/or, 2. any requirements the applicant’s proposal is being subjected to are beyond what is permitted by RSA 674:80. If a court finds that the municipality has done either of these two things, the court will require the municipality to reimburse reasonable attorney’s fees incurred by the applicant.

What *Can’t* You Do?

Municipalities cannot prohibit multi-family dwellings, as defined in RSA 674:43, I, on land in zones that permit office and retail commercial uses. Municipalities cannot deny the conversion of a pre-existing nonconforming structure to a multi-family dwelling unit or “mixed-use,” as defined in RSA 674:79, II, on land in zones that permit office and retail commercial uses so long as the building’s envelope is unaltered. Again, the term “building envelope” likely means a structure’s external dimensions.

Municipalities may not impose any requirements beyond what is permitted under RSA 674:80. These include, but are not limited to, frontage, setbacks, and height requirements, site plan review regulations, and provisions for adequate infrastructure.

If a municipality imposes frontage, setbacks, and height requirements for multi-family dwellings on land in zones that permit office and retail commercial uses, those specific dimensional requirements cannot be different than those which apply to permitted commercial uses. It is, however, unclear which dimensional requirements are applicable if different commercial uses in the same zone are subject to different requirements.

Municipalities may not require a special exception or conditional use permit for multi-family dwellings on land in zones that permit office and retail commercial uses.

What *Can* You Do?

Planning boards may require site plan review for multi-family dwelling units, so long as the frontage, setback and height requirements do not differ from what is allowed for commercial development. Planning boards may require applicants to demonstrate that there is adequate infrastructure to support a proposed multi-family dwelling unit on land in zones that permit office and retail commercial uses. Planning boards may specifically:

- For road infrastructure, require a traffic impact study to ascertain the potential impacts to the existing traffic conditions in the vicinity of the project, including but not limited to, the ability of existing road infrastructure to accommodate increased vehicular traffic, the availability of sidewalks, and infrastructure to ensure pedestrian safety.
- For water infrastructure, require that the applicant receive permission from the owner of a public water system to connect to the system or, in the absence of a public water system, develop a water supply in accordance with RSA 482-B and RSA 485 as applicable.
- For sewage infrastructure, require that the applicant receive permission from the operator of a public sewer within the boundary prescribed by RSA 147:8 or as negotiated between the applicant and operator to connect to the system.

The planning board may deny an application if it determines that:

- The volume of traffic is not supported by the road design at the conclusion of construction, or the development's layout and design do not ensure pedestrian safety;
- The applicant is unable to secure a source of water or the owner of an abutting well is able to demonstrate that their well will be unable to meet existing demand; or
- The applicant is unable to dispose of wastewater and sewage in accordance with regulations.

Further, municipalities may still restrict residential development in zones where industrial and manufacturing uses are permitted "which may result in impacts that are incompatible with residential use, such as air, noise, dust, glare, vibration, odor, or transportation impacts." Municipalities may also require that the ground floor space in the commercially zoned property be dedicated in whole or in part to retail or similar uses.

All municipalities should review their existing ordinances and regulations to see whether they need to be amended to reflect these new statutory provisions, because any provisions that conflict with new limits on municipal authority will be unenforceable.