

# NEW HAMPSHIRE MUNICIPAL ASSOCIATION (/)

 Member Login  
(/Account/Login)

## Court Update

### NON-CONFORMING USE LIMITED TO USES MAINTAINED WHEN THE NON-CONFORMITY WAS ESTABLISHED

*Dartmouth Corp. of Alpha Delta v. Town of Hanover*

New Hampshire Supreme Court No. 2016-0304, 4/11/2017

A non-conforming use has the burden to prove it was being operated in a manner inconsistent with a subsequently adopted zoning ordinance. The burden of proving the non-conforming manner of operation is on the party claiming the non-conforming status. Thus, once the Alpha Delta fraternity was decertified by Dartmouth College the burden was on Alpha Delta to prove it was a pre-existing student housing use that was never operated in conjunction with an institutional use such as Dartmouth College.

The Alpha Delta fraternity had been continuously operated as a fraternity/student housing use in conjunction with Dartmouth College from 1846 to the present. The fraternity's manner of non-conforming operation was always in conjunction with another institutional use. So even though the fraternity did not have to get a special exception based upon the 1976 zoning ordinance, it did have to maintain the use consistent with its non-conforming manner of operation and therefore remain in conjunction with another institutional use.

When Dartmouth College decertified the Alpha Delta fraternity as an approved student organization in April of 2015 this set the stage for purging the fraternity house as permissible student housing under the Town of Hanover Zoning Ordinance.

After Dartmouth revoked Alpha Delta's recognition of the fraternity as a student organization, the College notified the Town of Hanover that Alpha Delta was no longer affiliated with Dartmouth College. Thereafter, the Town's zoning administrator notified Alpha Delta that because the College had derecognized Alpha Delta, Alpha Delta's use of the property violated the zoning ordinance. On appeal the Hanover ZBA ruled that Alpha Delta failed to present any evidence that the fraternity ever operated in a manner which was not in conjunction with Dartmouth College prior to the adoption of that zoning requirement and therefore Alpha Delta did not sustain its burden of showing that its property is lawfully nonconforming.

The New Hampshire Superior and Supreme Courts both agreed that in order to prove that it was grandfathered from the 'in conjunction with' requirement, Alpha Delta needed to show that it operated its property in a manner that was not 'in conjunction with another institutional use' at the time the 'in conjunction with' requirement was adopted, in 1976.

**Click Here to View Court Decision.** (<http://www.nhmunicipal.org/Resources/ViewDocument/822>)

***Practice Pointer: In determining whether a use of land is grandfathered from a subsequently adopted zoning regulation a municipality must undertake a careful review of how the use was operated before the conflicting zoning restriction went into effect. The burden is on the party claiming the non-conforming, grandfathered status to prove the manner of operation was in conflict with a subsequently adopted zoning regulation.***

< [Back to Court Update Home \(/CourtUpdates\)](#)

Directions

(/About#DirectionstotheNHMA)

Meeting Notices

(/About#MeetingNotices)

NHMA Shop

(<http://www.nhmunicipal.org/shop>)

NHMA RSS Feeds

(/Datafeeds/Index)

Sitemap (/About/Sitemap)

New Hampshire Municipal  
Association

25 Triangle Park Dr.

Concord, NH 03301

603.224.7447

[nhmainfo@nhmunicipal.org](mailto:nhmainfo@nhmunicipal.org)

(<mailto:nhmainfo@nhmunicipal.org>)

© 2017