

**CITY OF KEENE**  
**PLANNING, LICENSES, AND DEVELOPMENT COMMITTEE**  
**MEETING MINUTES**

Wednesday, June 24, 2015

7:00 PM

Council Chambers A

**Members Present:**

Emily P. Hague  
Bettina Chadbourne  
Carl B. Jacobs, Chair Pro Tem

**Staff Present:**

Medard Kopczynski, Asst. City Manager  
Gary Schneider, Code Enforcement  
Thomas Mullins, City Attorney  
Steve Russo, Captain KPD

**Members Not Present:**

David Richards, Chair  
David R. Meader, Vice-Chair

**Others:**

**Councilors Present:**

James Duffy  
Robert O'Connor  
Philip Jones

Councilor Jacobs called the meeting to order at 7:00 PM welcoming the viewers of Cheshire TV, Channel 10.

Councilor Chadbourn moved that in the absence of the Chair and the Vice-Chair, Councilor Jacobs be elected as Chairman Pro Tem to conduct this evening's Committee meeting. Councilor Hague seconded the motion which carried unanimously.

Chair Jacobs addressed the agenda noting the petitioner for agenda item #4 has submitted a request to place Ordinance O-2014-12 on "more time". Chair Jacobs suggested this issue be addressed first; no opposition was expressed by Committee members.

**4. COMMUNICATION & ORDINANCE:** Attorney Thomas R Hanna - O-2014-12: Institutional Use – Wyman Road

There being no questions or comments from the Committee, Chair Jacobs asked for a motion.

Councilor Hague made the following motion which was seconded by Councilor Chadbourne.

On a vote of 3-0, the Planning, Licenses and Development Committee recommends that item four regarding O-2014-12 be placed on "more time".

1. **COMMUNICATION:** Kevin Dremel - Keene Music Festival - Request to Use City Property

Kevin Dremel, of 257 Beaver Street addressed the request and outlined the venues for the event. The 15<sup>th</sup> Annual Keene Music Festival will take place on Saturday, September 5, 2015. Noting the relationship with the City, Mr. Dremel took this opportunity to unveil the 2015 poster for the event. The poster was created by Matt Siebert, a local artist.

Chair Jacobs asked for Committee questions or comments.

In response to Councilor Chadbourne, Mr. Dremel clarified they would not be using Church Street, and that this change was in made several years ago at the request of the Keene Fire Department for safety reasons.

Councilor Hague asked if the Starving Artist venue had been replaced. Mr. Dremel stated they were working with Keene State College and the Center of Keene as an additional venue. Councilor Hague then asked Mr. Dremel how many performers would be there. Mr. Dremel indicated there would be around 85 performers. Mr. Dremel also noted the expansion this year to include a Classical Program at the Sumner Knight Chapel.

Captain Steve Russo, of the Keene Police Department reported protocol meetings were held; adding Church Street was not discussed at these meetings, but it presents no issues. Captain Russo outlined the Departments involved and their responsibilities for the event. Captain Russo also reported there have been no issues with this event in the past.

Chair Jacobs asked for clarification that the City's cost is covered in the recently adopted Community Events Budget. Captain Russo replied in the affirmative noting the event is budgeted for \$2,111.67 to cover Police.

Louise Zerba, of 340 Pako Avenue asked if the event would be held on Labor Day weekend. Mr. Dremel replied in the affirmative; adding the event is always held on Labor Day weekend.

The City Attorney pointed out the prepared motion has a date of September 6, 2015. Chair Jacobs indicated this was addressed prior to the meeting and the correction of September 5, 2015 was made; in addition the language regarding Church Street was also removed.

There being no further questions or comments from the Committee or the public, Chair Jacobs asked for a motion.

Councilor Hague made the following motion which was seconded by Councilor Chadbourne.

On a vote of 3-0, the Planning, Licenses and Development Committee recommends The Keene Music Festival be granted a street fair license to use downtown City rights-of-way for purposes of conducting merchant sidewalk sales, as well as use of City property on Central Square, Railroad Square, and designated parking spaces on Main Street to conduct the Keene Music Festival on Saturday, September 5, 2015 from 9:00 AM to 10:30 PM. In addition, the applicant is permitted to close off a portion of Railroad Street, from Main Street to the westerly entrance of the Wells Street Parking Garage. This permission is granted subject

to the customary licensing requirements of the City Council, submittal of a signed letter of permission from City Tire for use of their property, and compliance with any recommendations of City staff. In addition, the petitioner is granted use of the requested parking spaces free of charge under the provisions of the Free Parking Policy. The Petitioner agrees to absorb the cost of any City services over and above the amount of City funding allocated in the FY 16 Community Events Budget.

**2. COMMUNICATION: Dean Eaton - Your Kitchen Store - Request to Use City Property**

Noting the applicant was not present, Chair Jacobs read the request into the record. This is the 6<sup>th</sup> Annual Kitchen Karnival event and will be held on July 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup>. The request is the same as in past years.

There being no questions or comments from the Committee or the public, Chair Jacobs asked for a motion.

Councilor Chadbourne made the following motion which was seconded by Councilor Hague.

On a vote of 3-0, the Planning, Licenses and Development Committee recommends that Your Kitchen Store be granted permission to use City Property in front of their establishment, and three designated parking spaces adjacent to their storefront on July 16, 17 and 18, 2015 to hold their annual "Kitchen Karnival" event subject to the following conditions: the customary licensing requirements of the City Council; unimpeded public use of the sidewalk and maintenance of a minimum of 5feet in width for public traveling; obtainment of all necessary licenses and permits and compliance with all laws; payment of the standard daily rental fee for use of the metered parking spaces; payment of a \$60.00 fee for electricity access; and compliance with any recommendations of City staff.

**3. COMMUNICATION: Shannon Hundley/Keene Downtown Group - Request to Use City Property – Sidewalk Sales**

Tracy Keating, of 388 Old Homestead Highway, Swanzey agreed with Chair Jacobs this is somewhat related to agenda item two. Ms. Keating explained the Kitchen Store has held their event many times; and added the Downtown Group is trying to expand it now to include other merchants and make it more of a sidewalk-type of attraction for the downtown. Ms. Keating noted many merchants have their own permits to display, but the Downtown Group is trying to make it easier for all the merchants to be able to do it, by asking to be able to do it as a group. Ms. Keating continued they are hoping to encourage merchants which don't have permission on their own to participate.

Councilor Chadbourne asked Ms. Keating if this was the first year she was expanding. Ms. Keating replied they have expanded it to include everybody every year, but not everybody takes the time to apply.

In response to Chair Jacobs, Ms. Keating clarified they would not be taking any parking spaces downtown; they would be maintaining clearance for pedestrian access in front of their storefronts.

Chair Jacobs asked staff at what point does something become a Community Event? The City Attorney clarified this is not an event that is contemplated in the City's Community Event budget. The City Attorney suggested he would look at this as more of a blanket request for those who want to go to the City Clerk and request a license to be able to do that. He continued rather than have each individual owner come in and do that, the Keene Downtown Group is securing the permission. The City Attorney added, depending on the

success staff may want to restructure the process if they are going to do this in the future. Chair Jacobs commented at some point there may be public safety or right-of-way issues.

Medard Kopczynski, of Code Enforcement clarified the width requirement is not six feet; it is 60 inches or five feet. Chair Jacobs asked Mr. Kopczynski if expanding this event posed any concerns for the Code Enforcement Department. Mr. Kopczynski reported Code Enforcement doesn't participate in these events.

Captain Russo, of the Keene Police Department suggested once the Department has the dates the on-duty officers could swing by, do some walk-arounds, and get a look at what the crowds are to provide some input.

There being no further questions or comments from the Committee or the public, Chair Jacobs asked for a motion.

Councilor Hague made the following motion which was seconded by Councilor Chadbourne.

On a vote of 3-0, the Planning, Licenses and Development Committee recommend that the Keene Downtown Group be granted a street fair license to use downtown City rights-of-way for purposes of conducting merchant sidewalk sales on July 16, 17 and 18, 2015 in conjunction with their "Keene Karnival" event subject to the following conditions: compliance with the customary licensing requirements of the City Council; unimpeded public use of the sidewalk and maintenance of a minimum of 60 inches in width for public traveling; obtainment of all necessary licenses and permits and compliance with all laws; and compliance with any recommendations of City staff.

##### **5. VERBAL REPORT:** Zoning Board of Adjustment

Louise Zerba, Chair of the Zoning Board of Adjustment read her report into the record.

The Zoning Board of Adjustment's principal role, according to state statute, is to review applications for zoning variances, special exceptions, equitable waivers of dimensional requirements and hearing appeals from the decisions made by administrative officials. The role of the ZBA is to interpret, not to create, rewrite, implement or enforce the ordinance. The ZBA is a quasi-judicial body whose responsibility is to determine whether relief from the Zoning Ordinance should be granted during a public meeting conducted in accordance with RSA 91-A.

Membership consists of 5 members, chosen by the Mayor with confirmation by City Council. Members who are Keene residents are appointed to a three-year term and may sit for a consecutive second three-year term. Because all applicants are entitled to be heard by a panel of 5 sitting members, the Mayor can appoint up to 5 alternate members to replace a sitting member who is unable to participate in any given application.

A minimum of 3 yes votes is required to approve an application. An applicant may, at their discretion, choose to postpone a hearing if 5 members are not present.

A member may declare that he or she has a conflict of interest. After stating the reason, the board, at its discretion, can declare that the recusal is appropriate or determine that there is no conflict. A member should recuse themselves if they expect to gain or lose upon disposition of the case, is related to the applicant, has advised or assisted the applicant in any way, has directly or indirectly given an opinion or

formed an opinion in the matter, is employed by or employs any party in the case thus if a member has a direct personal or financial interest in the outcome.

If a sitting member asks to be recused, or if a board member feels that a conflict may exist with another member, the board will take a position upon which, if approved, an alternate will be seated to replace the recused member.

The ZBA has the authority to act in four separate and distinct categories and can be found in the City Code.

**Appeal from an Administrative Decision:** The board does not have the authority to enforce the ordinance. It does have the authority to hear and decide administrative appeals if it is alleged that there was an error in any order, requirement, decision or determination made by an administrative official in the enforcement of any ordinance. In exercising those powers it may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination.

**Approval of Special Exception:** The board may make special exceptions to the terms of the Ordinance in appropriate cases and subject to appropriate conditions and safeguards. All special exception shall be made in harmony with the general purpose and intent of the Zoning Ordinance and shall be in accordance with the general or specific rules contained in the Ordinance. The granting of a special exception does not alter the Zoning Ordinance but applies only to the particular project under consideration.

**Granting a Variance:** The Zoning Board can grant a variance from the terms of the zoning ordinance if 1. The variance will not be contrary to the public interest (show there will be no harm to the public interest if granted), 2. The spirit of the Ordinance is observed, 3. Substantial justice is done, (the guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice) 4. The values of surrounding properties are not diminished and 5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

**Equitable Waivers of Dimensional Requirements:** When a property or a structure on the property is discovered to be in violation of a physical layout or dimensional requirement imposed by a Zoning Ordinance, the burden of proof rests on the property owner who is seeking relief from the requirement. The board, in granting the waiver, must make its ruling based on a number of findings which is located in the City Code.

MS. Zerba continued that the ZBA may in appropriate circumstances permit a nonconforming use to be changed to another nonconforming use provided that certain criteria are met or that a nonconforming use may be expanded and enlarged provided such enlargement does not violate any of the basic zone dimensional requirements set forth under Section 102-210.

To perform its duties, the ZBA collects evidence from written material and testimony presented and determines what are the facts based on evidence with the burden of proof on the applicant and applies the legal tests from the statute to the facts. It conduct the proceedings in accordance with the Right to Know Law, requires opportunity for the applicant, with notice to abutters, to be heard at a public hearing and to speak on his or her own behalf or through legal counsel or an agent, requires decision making by board members who are impartial, and, based upon the evidence presented, requires a written decision indicating

approval, approval with conditions or denial and appropriate explanations.

Councilor Hague asked Chair Zerba if she felt she had any precedent setting or particularly difficult decisions to make this year. Chair Zerba replied in the affirmative; adding Code Enforcement is looking at some of the ambiguities found by the Board. Chair Jacobs asked for clarification that Chair Zerba meant there were ambiguities in the Code that made it difficult to make a decision. Chair Zerba stated Chair Jacobs was correct.

The City Attorney clarified for Councilor Chadbourne that Chair Zerba was talking about the Zoning Ordinance, and noted changes would come through the Council. The City Attorney noted staff submitted changes to the Zoning Ordinance with respect to medium-density that will come through the Committee process.

Councilor Hague asked if any of the Board's decisions had been appealed recently. Chair Zerba replied in the affirmative. Councilor Chadbourne asked if the appeals had changed the outcomes. The City Attorney recommended this area not be explored at the moment.

Chair Jacobs thanked Chair Zerba for her report.

There being no further business Chair Jacobs adjourned the meeting at 7:28 PM.

Respectfully submitted by:  
Mary Lou Sheats-Hall, Minute-taker  
June 25, 2015