

City of Keene
New Hampshire

PLANNING BOARD
MEETING MINUTES

Monday, June 25, 2018

6:30 PM

Council Chambers

Members Present:

Gary Spykman, Chair
Mayor Kendall Lane
Councilor George Hansel
Martha Landry
Chris Cusack
Michael Burke

Staff Present:

Rhett Lamb, Planning Director/Assistant City
Manager
Tara Kessler, Planner
Mari Brunner, Planning Technician

Members Not Present:

Douglas Barrett, Vice Chair
Pamela Russell Slack
Andrew Bohannon
Nathaniel Stout

1) Call to Order & Roll Call

Chair Spykman called the meeting to order at 6:30 PM and the Planning Director conducted roll call.

2) Minutes of Previous Meeting – May 29, 2018 Meeting

Mayor Lane made a motion to accept the minutes of May 29, 2018, which was seconded by Councilor Hansel.

Ms. Kessler noted the Board had a revised copy of the minutes on their desks, which included a minor change on page three regarding abutters.

The motion to accept the amended minutes of May 29, 2018 carried unanimously.

3) Extension Request

a. SPR-11-17 – Water & Grover Streets Parking Lot

Chair Spykman and the Planning Director agreed this is the first extension request so the Board just had to vote.

Mayor Lane made a motion to grant an extension for SPR-11-17 for six months, which was seconded by Councilor Hansel and carried unanimously.

4) Land Use Code Update Discussion – Review of Subdivision Regulations

Ms. Kessler shared a presentation related to the City's subdivision regulations, which were included in the meeting packet (including excerpts from NH RSA). She reviewed specific sections needing improvement.

First, Ms. Kessler shared the state definition of subdivision, which is, “the division of the lot, tract, or parcel of land into 2 or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance or building development,” (NH RSA 672:14). Per state statute, the intent of subdivision regulations is to, “Provide against such scattered or premature subdivision on land as would involve danger or injury to health, safety or prosperity by reason of lack of water supply, drainage, transportation, schools, fire protection or other public services,” (NH RSA 674:35). The Planning Board is the only authority for approving subdivision applications in NH; there is no option for administrative or staff approval of subdivided lands.

Regulations related to subdivisions are currently located in a few places: 1) State Planning and Zoning Regulations, 2) Planning Board Site Plan and Subdivision Regulations, and 3) The 19 Development Standards the Board. The Board would review these documents to determine if an applicant meets standards. Most subdivisions do not involve new construction, simply a division of land into more than one parcel, so many of Keene’s development standards do not apply. Also, most subdivisions do not include the development of a new road. If an application were to include a new road, the Board would refer to Chapter 70 for the street standards a developer would have to meet.

Keene defines a subdivision slightly differently than the state as, “. . . any division of a lot, tract, or parcel of land into 2 or more lots, plats, sites, units or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance or building development.” By including “units” in this definition, the City should technically be addressing condominiums through the subdivision review process; the City has this right under state statute. Ms. Kessler’s question to the Board was if subdivision regulations should apply to condominium conveyance.

Ms. Kessler continued by defining condominium as a system of real estate or property ownership that includes individually owned units and units owned in common/common areas; it is a method of sharing property. NH RSA 356-B governs condominiums and municipalities can choose to include condominiums as a part of their subdivision regulations but must explicitly state so in the regulations. She proposed, as a topic of conversation, if condominiums should be included in the definition of subdivision.

If, for example, a single-owner strip mall was divided into condominiums with multiple owners/units, but there were no changes to the site, the Planning Department would not bring those matters before the Board for review. Still, per the City’s definition, that review is possible.

Chair Spykman asked if the code addresses co-housing developments, which are similar to condominiums, with shared common land area and smaller occupied parcels. Ms. Kessler replied it depends on how the land is developed; if there were multiple units on a site – whether condominium, co-housing, etc. – it would still have to meet minimum zoning requirements for density and setbacks and be in a zone that allows for multiple units on one lot. The Planning Director agreed and added that co-housing might also be addressed in a Conservation Residential Development, where land can be set aside through the subdivision for a common building/gathering space owned in common (addressed later in the presentation). He recalled that a condominium is not a division of land through the subdivision process; it is just a form of ownership.

Mayor Lane noted that condominiums are not just residential, they are also commercial; many malls are condominiums. He said a typical residential condominium likely does not need Planning Board scrutiny, but he would be concerned not having the ability at all.

Councilor Hansel asked what would happen if a large commercial building wanted to be a condominium with multiple uses inside the building and shared spaces, like a parking lot. He asked what oversight would happen in this scenario if the word “units” was removed from the subdivision definition. Ms. Kessler replied that the Planning Director would review the change of use to determine if it needs full site plan review or if it can be addressed administratively. It would also be reviewed by the Zoning Administrator to determine if it is an allowable use in that district. Councilor Hansel asked about traffic changes due to a site change. Ms. Kessler replied that would be evaluated through the site plan review

process. Mayor Lane said that is contingent on the project coming for site plan review; he said the Colony Mill never came before the Board for site plan review. Ms. Kessler replied that the Mill owners were asked to do a traffic study as part of an administrative review, which showed reduced traffic impacts. As no changes were being made to the exterior of the building or the surrounding site, it met the minimum administrative review criteria.

Mr. Cusack asked if Keene is trying to be more like the state by considering removing the word “units” from the City definition. Ms. Kessler replied the state definition allows for condominium conveyance to be included as a part of site plan review. In Dover, regulations state that per RSA 356-B, condominiums are not included as a part of the subdivision review process and subdivision regulations do not apply to condominiums. Other communities, however, have chosen to include condominiums in their subdivision review process. The City of Keene has the choice, per state statute, to include condominiums in subdivision review or not, but they must explicitly state whether they do or do not in the City code.

The Planning Director said many condominiums are a commercial interior division of an existing building into many units. That situation is considered a change of use, but in most cases the City would not want to regulate that as a subdivision because the interior condominium units do not meet any zoning criteria (frontage, minimum size) and would need an entirely new set of thresholds. There are condominiums that have units outside of a shared building and there are typically shared common areas, such as parking or open space. However, it is not typical to review these types of condominium conveyances as part of the subdivision review and approval process. There are areas of limited common areas at the Monadnock Marketplace and Railroad property, which are condominiums. He said the question is if these properties are to be regulated as subdivisions, what standards should be used.

Councilor Hansel asked about a situation where an owner decides to divide and lease a privately owned empty building. The Planning Director replied that is also a change of use and as long as the zoning district allowed it, the Planning Department would determine if the change of use met the threshold for review.

Mayor Lane asked what other communities of similar size in the state have done. Ms. Kessler replied that Hanover, Portsmouth, Concord, Hopkinton, and Lebanon all include condominium conveyance in their definition of subdivision. Dover is the only municipality of similar size to Keene (most-similar size) that was reviewed by City staff that does not include condominium conveyance in their subdivision definition.

Ms. Landry asked if this only applies to condominiums in an existing building or also to vacant land developed into residential condominiums. Ms. Kessler replied it would apply to both.

Ms. Landry asked about the vacant property at the north side of the RT-12 roundabout (near 7-11). The Planning Director said the last time that property was seen it was for a proposed zoning change.

The Planning Director continued that the main question at hand is if a residential condominium were being developed, would the Board want to review it under subdivision review rules; if the Board chooses not to review it as a subdivision, will it be subject to any review at all. Staff believes a site plan review process would be triggered for any lot with three or more units being developed. Ms. Kessler noted that commercial and multifamily properties would be subject to site plan review of there is a change of use or if new development is proposed. However, it would be possible to have a 2-unit condominium, and this would be exempt from site plan review.

Ms. Landry asked the difference in abutters’ rights between subdivision and site plan review processes. Ms. Kessler replied the abutters’ rights are the same for both processes. If an application comes before the Planning Board for subdivision or site plan review processes, abutters are notified and there is a public hearing process. However, if a project does not meet the threshold for site plan review by the full Planning Board, City regulations allow the Planning Director and staff to conduct an administrative review, in which case, abutters are not notified and there is no public hearing.

Chair Spykman said it seems to him there are very few things that determine if is a condominium will come before the Planning Board or not. Many different things can be called a condominium and his fear is if the word “units” is omitted, then the City needs a good definition of subdivision so someone cannot treat something as a condominium that is not. The Planning Director said that makes sense. Ms. Kessler added there is a state statute that governs condominiums, so if you call yourself a condominium you have to adhere to the guidelines in that RSA.

The Planning Director noted the Board did not need to make any decision on this matter at this meeting. He proposed continuing the discussion at the July meeting, when staff will share further edits.

Ms. Kessler continued, noting that there is not a subdivision section of the development standards. Primarily, the City uses the 19 development standards for site plan review to review subdivisions. Staff proposes developing subdivision review standards; these may be similar to site plan review standard but they would be a separate set of conditions specifically for subdivisions. Most subdivision applications before the Planning Board do not include new construction or creation of a road; if something like this did come before the Board, however, it would be prudent to have a clear set of standards to make decisions. Almost every other community in NH has specific review criteria for subdivisions. It may also make it easier for an applicant to see the standards that apply. Ms. Kessler listed some potential considerations for standards: lot and site layout/conformance with zoning, steep slopes and hillsides, drainage, availability/suitability for utilities, presence of surface water/wetlands/floodplains, traffic, access and driveways, and fire protection. Most rural zones do not have City water so notes should be made on subdivision plans indicating fire protection options (like a cistern or fire pond).

The Planning Director said this is part of an ongoing process to make regulations easier to understand but also make improvements to the development layout of the City. He noted there has been a problem with infill (small subdivisions in existing neighborhoods) in the past and cited ambiguity in how to regulate those areas.

Chair Spykman said an underlying assumption of the potential standards is that if someone subdivides, all the subdivided lots have to be developable. He questions why someone cannot choose to divide their land and leave some portions undeveloped. Mayor Lane replied he thinks if a person subdivides the land with no intention of developing the lot, in the future someone will ask for a variance to develop the lot; the City will have created a nonconforming lot for no other reason than the current owner does not want to develop it. The City needs to ensure that future owners can develop the lot. The Planning Director agreed and said part of the Board’s job is to consider the orderly progression of development over time.

Chair Spykman said the potential subdivision standards are like an overlay onto a plot plan the Board can use to determine if there is still room for a building. The Planning Director replied yes, staff wants to tailor the 19 standards to different sizes of subdivisions to fit projects most commonly seen in the City.

Councilor Hansel said there is redundancy with the steep slope and hillside protection ordinances. The Planning Director replied staff will try to avoid redundancies and will make changes for clarity.

Mayor Lane returned to the topic of infill development, which has been problematic anytime it is before the Planning Board. He is unsure what kind of regulation would be acceptable and allow the Board greater flexibility on infill approval. He said neighbors do not want infill development because there are always problems on the lots, which are why they have yet to be developed; but the City has no authority to say they cannot be developed. He asked staff to research suggestions on how the Board can have the ability to regulate infill development. The Planning Director and Ms. Kessler agreed; the plan is to return to the Board with standards to review for each of these matters.

Ms. Kessler continued discussing hillside protection. Right now, there is a section in the subdivision regulations on hillside protection. There are specific criteria that say steep slopes and hillsides (precautionary or prohibitive slopes) need to be removed from the total considered lot size that can be developed. For example, if minimum lot size is 5 acres but steep slopes accounts for 2 acres, only 3 acres

can contribute to the minimum lot size. This restriction is not currently in the zoning ordinance but rather, it is in the Planning Board regulations. Staff suggests if hillside standards for subdivisions are developed, to relocate the hillside section with the other subdivision review criteria. This will also help with the overall Land Use Code Update and streamlining the code.

There is also confusing and redundant language in the hillside portion of the subdivision regulations that staff proposes addressing. At the moment sections III.C.6.a and III.C.6.b have the same language, for example.

Ms. Kessler continued discussing the surface water protection portion of the subdivision regulations. The zoning ordinance states that areas of surface water resources (wetlands, streams, ponds) are excluded from the minimum lot size; however, this is not mentioned in the subdivision regulations. Relief from this standard requires a variance from the ZBA; whereas, relief from the subdivision regulations requires a waiver from the Planning Board. A builder would need to know all of this information located in different sections of the land use code and zoning ordinance before they develop their lot plans for a subdivision. Staff proposes removing this from the zoning ordinance and relocating it to the subdivision regulations, similar to the hillside protection section. It would then be the authority of the Planning Board to grant waivers from this minimum lot size requirement based on the intent of these sections.

Councilor Hansel asked the rationale for excluding surface waters from minimum lot size; to him, minimum lot size just prescribes building density. The Planning Director replied the standard comes from the logic that you would not subdivide a plot that is almost exclusively wetlands or prohibitive slopes. This may not be a problem for an individual landowner, but it is when discussing subdividing property and areas with extreme limitations that should not be built on. Chair Spykman agreed this applies to the element of density in zoning but also the natural limitations to use of land; land is not buildable if you cannot do everything you need on it (like septic). Councilor Hansel said it seems like building limitations and requirements are covered in other parts of the code. The Planning Director replied that these standards may be not applied prior to someone selling a vacant lot to someone else. Often these standards apply with the issuance of a building permit.

Chair Spykman added they are not talking about someone applying for a permit to develop something, but establishing the lot to be divided. Ms. Kessler agreed there is a section of the zoning ordinance for both hillsides and surface waters that refers to construction or modification of structures. Chair Spykman agreed they are dealing with two different things: zoning/permit to build on a lot and establishing a lot as a subdivision; surface waters and steep slopes are addressed in both places. Ms. Kessler agreed and noted the hillside and surface water regulations for minimum lot size are scattered between the zoning and subdivision sections. With the update, staff intend to clearly list the information in one place. Chair Spykman clarified that if someone just builds a home on a lot with surface waters or hillsides, their development would be regulated through the building permit review process, and aspects of both standards would apply. The Planning Director continued that the issue of subdivisions only applies to the issues Ms. Kessler has described in the subdivision process, which is not development, just division of land. Hillside and surface waters are a consideration and discounted from minimum lot size to be subdivided.

Ms. Landry asked if this Board has the authority to approve a subdivision that creates a nonconforming lot. The Planning Director replied no, the lot has to comply with zoning first.

Ms. Kessler continued discussing Conservation Residential Development (CRD), which was already introduced at the Joint Committee and will require continued dialogue. CRD is an alternative to a conventional subdivision (a lot divided into two or more units that meet zoning and minimum lot size requirements). It is required in the Low Density, Low Density 1 and Rural Zoning Districts when an applicant proposes to subdivide a lot into three or more lots and install a new road. Ms. Kessler continued that CRDs:

- Promote natural resources conservation while providing greater flexibility in residential development design

- Allows for clustering of units at a higher density
- Designated protected open space

Ms. Kessler noted that CRD would allow for reduced minimum lot sizes within a parcel of land as long as 50% or more of the tract is labeled as permanent open space. It is a great option for some tracts of land, however, the process as outlined right now is difficult to understand, and the regulations are located in multiple places. She recalled that there is a zoning district for CRD but there is no area of land that district applies to. It only applies when someone chooses to do a CRD. Within the subdivision regulations there are approximately 15 pages that outline the CRD process, procedure, review criteria, dimensional standards, and open space requirements for CRDs. In an effort to streamline the process and because CRD is an attractive option, staff hopes to make it easier to understand the standards and what is involved.

The Planning Director added that when it comes to hillsides and surface waters, if CRD became the standard, it would be a better way to handle those decisions on where to develop; it gives an owner the ability to subdivide in the best way.

Councilor Hansel said he supports this and it seems straightforward. He said if a subdivision review includes more than 50% land in conservation it should not be complicated as long as it is enforceable. The Planning Director said a good example of a CRD is at Darling and Daniels Hill Roads. CRD is a good option for a lot of land left in Keene that is hard to develop.

Chair Spykman clarified that there is a CRD zone, but that zone cannot be identified on a map. Ms. Kessler replied CRD is a use and subdivision type allowed in Rural, Low Density, and Low Density 1 districts; you will not see it on a map because it only applies in certain zoning districts when a subdivision is proposed. Once it is done, it is still a part of the district it was developed in. the Planning Director said it became a district unintentionally in the 2001 coding process.

Ms. Kessler noted she will be back before the Board and/or Joint Committee on this topic. She listed remaining edits:

- Create separate boundary line adjustment application. Today there is one subdivision application that applies to boundary line adjustments and a separate form for voluntary mergers. A subdivision application is not ideal for a boundary line adjustment.
- Revise unclear, redundant or inconsistent language; content changes without changing how we do business in Keene

5) Planning Director Report

a. Review of 2017/2018 Administrative Approvals

Rhett Lamb stated this item is a report on the administrative approvals for 2017 and 2018 to date. He added the Site Plan Regulations provide authority to the Planning Department to make decisions on proposed site plans or modifications to site plans that meet certain criteria. Mr. Lamb described the different types/categories of administrative reviews that were conducted. Modifications to plans that have received Planning Board approval, but minor changes are proposed as projects enter the construction phase, is a common form of projects reviewed administratively. He provided examples for Hillside Village and MoCo. The Planning Department asks builders to inform them when a change arises and then submit a series of modifications to avoid redundancy in staff review. There are other more significant situations when, for example, a building has been constructed for a long time and the owner wants to modify through the administrative process. In these situations, if the appearance of the building is involved, staff would consult with Chair Spykman to determine if Board input is required. He said information was in the meeting packet and the welcomed questions and comments from the Board.

Ms. Landry asked about Colony Mill, which was handled administratively; she asked if that was because the change was an allowable use. The Planning Director replied that in the case of the Colony Mill project there were no proposed changes to the exterior of the building or site, the parking was not being permanently modified, etc. They were asked to provide a traffic study to determine if they needed full Planning Board review. In this circumstance, traffic was shown to be reduced with the new proposed use.

For these reasons, it was approved administratively. The Planning Director said he is also cautious because there is no public process with administrative approval. In the case of the Colony Mill, staff was aware of the most recent variance they had applied for, which was a variance to allow for residential use in the Commerce District. The Planning Director reviewed the ZBA minutes from this variance hearing to gauge the public opinion on the project. There was almost no public comment on this application. Ms. Landry asked if change in assessed valuation or loss of jobs are a factor. The Planning Director replied no, only development standards.

Chair Spykman agreed it was odd for a project that large (referring to the Colony Mill) to go forward without formal Board review but he consulted with the Planning Director on this decision and there was no proposed impact related to the Planning Board Development Standards, with the exception of traffic, which showed there would be a reduced impact with the proposed change to residential. Mr. Cusack asked if pedestrians were considered in that traffic study; he imagines there may be increased pedestrian traffic from the residences that would impact traffic signals. The Planning Director said that is a legitimate point. Mayor Lane said he still gets questions from the public about how that project was handled by the Planning Board and he tells them the Board had no say in it, when that decision was made, and the public had no opportunity to learn what that project was about. He said it was a bad decision in his opinion.

Mr. Cusack said overall he is impressed by administrative approvals and cited improvements he has noticed around the City. The Planning Director agreed it will be important as the City moves forward with a Unified Development Ordinance and making the process easier for people; he expects to see more administrative approvals and enhanced thresholds. He said this is the only way to move projects more quickly through this process.

6) New Business

7) Upcoming Dates of Interest – July 2018

- a. **Planning Board Meeting – July 23, 6:30 PM**
- b. **Planning Board Steering Committee – July 10, 12:00 PM**
- c. **Joint PB/PLD Committee – July 9, 6:30 PM**
- d. **Planning Board Site Visits – July 18, 8:00 AM – *To Be Confirmed***

Hearing no further business, Chair Spykman adjourned the meeting at 8:01 PM.

Respectfully submitted by,
Katie Kibler, Minute Taker

Reviewed and edited by,
Tara Kessler, Senior Planner