

City of Keene
New Hampshire

JOINT PUBLIC WORKSHOP
PLANNING BOARD/
PLANNING, LICENSES, AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Monday, October 14, 2019

6:30 PM

Council Chambers

Planning Board Members Present

Douglas Barrett, Chairman
Andrew Weglinski
Martha Landry
Mayor Kendall Lane
Gary Spykman
Councilor George Hansel
Tammy Adams

Planning Board Members Not Present

Chris Cusack, Vice-Chair
Michael Burke
Pamela Russell Slack

**Planning, Licenses and Development
Committee Members Present**

David Richards, Chairman
Councilor Philip Jones
Councilor Kate Bosely
Councilor George Hansel

**Planning, Licenses and Development
Committee Members Not Present**

Councilor Robert O'Connor

Staff Present

Tara Brunner, Senior Planner
John Rogers, Building and Health Official
Med Kopczynski, Director Economic
Development and Special Projects

1. Roll Call

Chair Barrett called the meeting to order at 6:30 PM and a roll call was taken.

2. August 26, 2019 and September 9, 2019 Meeting Minutes

Gary Spykman offered the following correction – page 13 – change month reference from May and June to October.

A motion was made by Councilor George Hansel that the Joint Committee accept the August 26, 2019 and September 9, 2019 meeting minutes as amended. The motion was seconded by Councilor Phil Jones and was unanimously approved.

3. Continued Public Workshop

Ordinances – O-2019-13 and O-2019-14 – Relating to Social Service and Congregate Living Uses. Petitioner, City of Keene, proposes changes to Chapter 102 – Zoning, Chapter 46 – Licenses and Permits, Chapter 18 – Building Regulations, and Appendix B – Fee Schedule of the City Code of Ordinances. The amendments proposed include the introduction of land uses categorized broadly as Social Service and Congregate Living uses as well as a conditional use permit and City operating license for some of these uses.

Senior Planner Tara Kessler started by saying the purpose of this ordinance is to introduce a number of new land uses into the ordinance because the current zoning is outdated. She noted

last month was the first public workshop for this draft ordinance and there were comments and concerns expressed at that time.

Ms. Kessler referred to an overhead presentation and went over some of those comments and concerns – definitions might be too targeted (social service facilities and residential care facilities).

She referred to the new definition for social service centers and the existing definition. She noted it is staff's recommendation to remove abutter notice for annual operating license – however, would retain as part of the conditional use permit notice to abutters within 200 feet of the site.

Staff is also recommending removing the fee for obtaining a license; this would be consistent with council policy.

Conditional use permit criteria are too subjective – currently there are two general criteria, it is difficult to find criteria that fits every scenario. Ms. Kessler added the existing criteria is too subjective and stated staff would like some guidance on it.

Under the conditional use permit criteria, there was concern about not being located directly next to a residential district – in place of this restriction staff is proposing a setback or buffer distance between structures and the property line abutting parcels in residential zoning districts.

Location – where these uses will be located – the draft ordinance has locations where these uses can be located today by right or by a conditional use permit; expanding the areas where some uses are allowed, concern for allowing group homes in the office district, which is not allowed at this time and impact of these uses on the neighborhood. Ms. Kessler stated what the public might not be aware of is that the city is working on trying to create new sub districts in the downtown as part of the Building Better Together project to replace the downtown zoning districts. There is a draft ordinance ready to be submitted.

Mr. Kopczynski noted to the importance of keeping both these ordinances moving forward. He asked the committee for its input on the definitions keeping in mind this likely to change as the process moves forward.

Ms. Kessler went over some criteria, which would become a topic of conversation in the downtown outer core and whether those areas should be considered for homeless shelter locations as well. She referred to a rendering of a map for the downtown.

She noted a draft ordinance for internal review is scheduled to be ready by October 21, draft for public review in early November and public hearing in December.

Ms. Kessler in closing stated staff's plan is to continue working on definitions until this committee is confident the definitions are solid as well as the conditional use permit criteria and the operating license criteria. Then to inter-weave the form based district and where these uses should be located in the city.

Councilor Jones referred to the fee waiver proposal, asked whether this would not be in conflict with city regulations, and noted to the instance when the school district asked for a fee waiver and they were turned down – as city resources still need to be utilized. Mr. Kopczynski noted the council's fiscal policies talk about fees and fee recovery. There are instances where the council would determine it is in the best interest to waive a fee for a particular entity.

Chair Barrett asked whether the fee waiver was just for nonprofit organizations or whether fees are going to be removed from the process altogether. Ms. Kessler stated the proposal was to waive it altogether.

Councilor Richards felt there should not be a charge for an operating permit for a non-profit. Councilor Hanse clarified the new map would be adopted as part of the UDO and asked what the timeline was to getting the new map adopted. Ms. Kessler stated the formal public release would be the first week of November with internal review happening the last week of October.

Mayor Lane joined the session at 6:55 pm.

Ms. Landry asked for clarification of the term for social service agencies and clarified the proposed definition seems to indicate all social service agencies are not privately owned. Ms. Kessler stated that for purposes of this draft it is public, non-profit or charitable institutions. Ms. Landry felt the definition leaves out privately owned institutions and was not sure whether that could be an issue. Chair Barrett asked whether it matters if it is privately owned or not. Mr. Kopczynski stated what is before the committee is specific, based on comments received but if a for-profit agency was added to the language regarding public, non-profit and charitable would be deleted.

Councilor Jones clarified some of the definitions that used to fall under the lodging house license will now fall under CUP. Ms. Kessler answered in the affirmative and went on to say, one of the ordinances being proposed change chapter 46 of the current ordinance, which deals with licenses. This change would remove the item that relate to lodging houses and create a congregate living, social service section and lodging houses would be one of those uses that would need a license under this category. The Councilor clarified that all CUP's go before the Planning Board. Ms. Kessler explained if a use is allowed by a CUP, it will first go before the Planning Board and the Board will decide if this use could occur based on the criteria they have. If a CUP is issued and it is one of the listed uses, that use will require a license each year issued by the Community Development Department. Councilor Jones stated his concern is lodging house licenses used to come before the City Council and the Council was able to place conditions on them, that ability is now being deleted. Ms. Kessler agreed. Councilor Jones noted the City Council had 11 conditions to issue a lodging license this will not exist anymore and stated this is a concern.

Councilor Richards noted the draft ordinance to the public is going to be released sometime in early November, therefore, the discussion on buffers and setbacks would need to be determined at that time.

Mr. Spykman referred to language as it relates to social service centers. He stated the rationale for the language, as it exists now as the language indicates; public, nonprofit or charitable institutions would only operate this agency. He added there was discussion as to whether this language should be altered to allow for private or for profit organizations. Ms. Kessler stated that when staff was looking at this use, they looked at it more as it relates to a civic type use. Mr. Kopczynski added this use is clearly different from some other uses such as clinics and jails – this use fits somewhere in the middle. Mr. Spykman stated he wanted to make sure the language is clear enough and that it is not over-limiting and felt keeping it as nonprofit or charitable helps to keep the focus tighter.

Ms. Landry stated for her it would be in the services provided and not who is providing the service. Chair Barrett stated that for him it would be about regulating the use, not the ownership.

Councilor Bosely stated she agrees – she operates a for profit business which appears as a nonprofit entity in the community and felt once an industry starts to develop, the for-profit sector is going to try to get into the industry. She felt it is about what is happening inside the facility but not who owns it. The Councilor asked whether the Community Development Department still has access to add conditions as is done currently by the PLD Committee. Ms. Kessler stated the conditions would be landuse specific.

Mayor Lane stated he too feels the legal structure of the organization does not matter as opposed to the uses being conducted inside the structure, which is what is critical, and what the city should be regulating. The Mayor felt this is an area in transition, something that is changing on a regular basis.

Councilor Hansel stated the language he is struggling with is the term “health of the neighborhood” and stated he is struggling with an argument for that concept. Mr. Kopczynski stated the term “welfare, health and safety” is a term of art and has a lot to do with how a use affects a community, how a building is structured – it is a big variable. The Mayor stated this is a term that is often used in Trust Law and both the Federal Government and the IRS have recognized this term as having a specific meaning. Mr. Kopczynski noted this term seems to have the biggest connotation of uncertainty and perhaps it should be better defined.

Mr. Spykman stated the term that is vague for him is in item 2 – “character” and felt there should be more “check boxes” rather than be about whoever is on the Planning Board trying to define and interpret same based on how they personally feel about the issue. Ms. Kessler in response stated there is definitely the argument to make the criteria less open ended. However, when there needs to be more specificity, standards for things like lighting level, hours of operation etc. would need to be set. This would cause the Board to be stricter and not leave room for interpretation.

Ms. Adams asked for more explanation as to what the different terms mean.

Ms. Landry stated she agrees with Councilor Hansel with reference to the term health would need further defining.

Chair Barrett asked whether there could be a definition section with more guidance provided.

The Chairman asked for public comment next.

Mr. Keith Thiebault of Southwest Community Services (SCS) addressed the Committee first. Mr. Thiebault referred to CUP criteria the committee was discussing; he stated the concern he had is with the reference to compatibility with surrounding areas and suggested making it compatible with the zone. He agreed going with the use of the social agency was the way to go. He went on to say with reference to the buffer that the Town of Swanzy addresses this issue by providing for a vegetative buffer. With reference to domestic violence shelters, he stated that SCS does not operate such centers; but does work with them. He referred to the last sentence, which indicates that “the facility shall be managed with in-house supervision provided on a 24-hour basis”. He also added that the model of domestic violence shelters does not provide for 24-hour coverage as this could prove to be very costly and added Monadnock Center for Violence Prevention (MCVP) is looking to move away from communal living to individual living units.

He offered one more suggestion regarding the renewal of licenses – should the management change hands, the process should be restarted.

Peter Mumma President of Phoenix House was the next speaker. Mr. Mumma felt a CUP versus a permitted use is a very specific way to go. He stated one of the things they are seeing when CUP's are renewed each year – it limits organizations to a one-year lease and questioned why a not for profit like Phoenix House would purchase a property if they might lose that property in one year. He went on to say what communities see when a for profit addiction treatment facility comes into town is that access to services dries up as it could cost upwards of \$40,000 to enter such a facility. However, not for profit organizations welcome anyone regardless of their method of payment. He noted the median per capita income in Keene is \$29,000 and family income is \$52,000, which make \$40,000 for treatment impossible and residents would have to leave the community to get treatment.

Mr. Mumma went on to say integrating services would be his recommendation which reduces the overall expense of treatment,

Mr. Steve Bragdon of Keene stated there is no easy solution to this problem and commended the committee for the work it is doing. With respect to abutter notice, he did not see a need for it and felt if things not are going well abutters will pay attention to when a hearing on the issue is coming up and the city can then be notified. He however, stated he feels it was necessary to have an annual means to regulate these entities. With respect to waiving of fees, felt if an entity could not afford \$200 they should not be in service and felt staff time costs more than \$200 for these efforts. Mr. Bragdon stated he was unclear whether the Planning Board would have the same kind of power the Council had with respect to imposing conditions and felt this was necessary and he rather see the Council handle this issue who are elected officials as opposed to the Board who are appointed officials. He also added he did not have an issue with the term “health” – and felt everyone deserves a place but it needs to be managed.

Ms. Mindy Cambiar of 100 Nights stated she was looking for clarification – she stated she was confused in that 100 Nights is classified as a homeless shelter but they also offer social services and asked how that affects their status. With respect to square footage, their current social service area can only accommodate about 25 people but in reality, it serves over 600 people annually. A social service center can locate in a variety of areas as opposed to a homeless shelter. Ms. Cambiar questioned how one can distinguish the effort on social service agency provides versus another. She further stated she had hoped this process would enable them to apply for funding in January which she felt was not going to happen – she noted at this point during the 100 Nights the shelter is open they only have 5 beds open, questioned what her agency should do when these five are filled up and 25 more people need to come in.

Chair Barrett stated with respect to the combined uses – there is one principal use and other uses are considered accessory uses and these uses do not need to be permitted in the district. He asked for staff clarification. Building and Health Official John Rogers agreed and added the private use is something that would be allowed in the district and the accessory use is based on the percentage to be considered accessory. He further added 100 Nights currently operates two buildings and they are both considered primary uses.

Rev. Elsa Wurth of St. James Church stated many who use social service agencies do not have transportation and hence services need to be relatively close to each other. She stated she has clarification on the larger picture as to how these agencies work together for the city and hoped this sense of integration was part of the plan. Chair Barrett asked whether Rev. Wurth had any

ideas as to how to put what she has suggested in place. Rev. Wurth stated the city is the city and not separate boxes but did not quite have an answer. She stated she wanted to be a voice for those who do not have a voice at this table but who are our neighbors.

Mr. Peter Espiefs of Middle Street addressed the Committee next. Mr. Espiefs applauded the committee for trying to help those who are in need but added there are some people who are derelicts and cannot operate by themselves and are going to be travelling back and forth to appointments in areas where families reside. He felt this has to do with more than standards that relate to light, traffic etc.

Mr. James Duffy of Winchester who is on the Board of 100 Nights Shelter thanked the Committee for all its hard work. He asked whether the committee instead of the term social service center would consider community resource center and felt this name has a more positive image. He also suggested some sort of limited medical care (exams, flu shots). Mr. Duffy stated limiting homeless shelters to commerce and central business limited, places an undue burden on any agency. He suggested high density, and high density one as other areas for these social service agencies to provide for more flexibility; serve more in a concentrated way.

Southeast neighborhood, if we are going to police - do it in a comprehensive way. Mr. Duffy referred to the southeast neighborhood, which has many housing issues (drug dealing, prostitution). He stated if the city is trying to address some of these social problems they need to be addressed in a more comprehensive way and not judge one group over the other.

Rev. Wurth in reference to Chair Barrett's question; to obtain a permit there are a number of things that would disqualify an entity and asked if something could be added which would qualify an entity – "services offered by one agency has complimentary services within walking distance" – is an example.

Pastor Derek Scalia, Deacon of St. James Church stated when restrictions are created to keep individuals out who have already been marginalized they are then considered to be "others" with negative connotation. He stated as a member of the clergy he has a responsibility of looking at each member of this community as his brother and sister, asked the committee do the same, and create zoning regulations that ends the stigmatization of the poor and those needing services.

Ms. Jan Peterson Board Chair of 100 Nights Shelter addressed the Committee next. Ms. Peterson stated her concern is when the city starts policing these organizations as has been suggested it has a specific meaning to her. As far as the abutter notice – she stated if abutters are permitted to address the license issue each year, the permit will start to be re-litigated each year.

Ms. Kessler stated the CUP will be a one-time permit issued by the Planning Board – it is the annual operating license as proposed in the draft which will require certain information to be presented and it will be at the discretion of the Community Development Director to issue this license. The primary reason for the operating license is to make sure life safety codes are being met. Chair Barrett clarified the license renewal will be handled administratively and if there are complaints from abutters those are items that will be considered by staff during the license renewal process without the need for a public hearing. Ms. Kessler agreed and added there will be an appeal at that point to the City Manager not the City Council.

Ms. Polly Morris of Winchester was the next speaker. She referred to the definition for Health as stated in Wikipedia:

Health is a state of physical, mental and social well-being in which disease and infirmity are absent.

She noted to the policing of people and stated she like Mr. Duffy's suggestion for changing the name to community resource centers. She added that 23.5 million people in this country are afflicted with a drug addiction but there are that many in recovery. There is also research which indicate about 40 million people in this country who will suffer from a mental health crisis, 5 million who are affected by Alzheimer's who can get difficult to handle at times, then there are burn victims who don't look normal and noted it is important to decide who we want to help and who we want living in our neighborhoods. She stated it is important to keep in mind who we are separating and keep in mind the well-being of everyone and treating each other like humans and give their voices a chance.

Alicia Deaver, Director for Rise for Baby and Family stated their model is working with children birth to three years old with developmental delays and their families. They also have a home visit opportunity but families at times need more that they can offer and need other services in the community and wanted to be more cognizant of that and not making obtaining these services a barrier

With no further comments, the Chairman closed public hearing.

Mr. Spykman thanked everyone who made comments as this is a community project.

Councilor Jones stated he heard mentioned the licensing official was the City Manager but the documents before the Committee indicate this would be the Community Development Director. Chair Barrett stated it would be the Community Development Director but any appeal would go before the City Manager.

Mayor Lane stated not only are there comments from tonight and last month but there are other meetings going on around the community, which would have an impact on this ordinance. He noted this is just a starting point

A motion was made by Mayor Kendall to continue this public hearing to Tuesday November 12, 2019. The motion was seconded by Gary Spykman and was unanimously approved.

4. Adjourn

The meeting adjourned at 8:20 PM.

Respectfully submitted,
Krishni Pahl, Minute Taker

Reviewed by the Community Development Department