

City of Keene
New Hampshire

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

Monday, March 9, 2020

6:30 PM

Council Chambers

Planning Board Members Present

Chris Cusack, Vice-Chair
Andrew Weglinski
Mayor George Hansel
Pamela Russell Slack
Gail Somers
David Orgaz
Tammy Adams, Alternate
Emily Lavigne Bernier, Alternate

Planning Board Members Not Present

Doug Barrett, Chair
Michael Burke
Councilor Michael Remy

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

Kate Bosley, Chair
Councilor Gladys Johnsen
Councilor Mitchell Greenwald
Councilor Philip Jones

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

Councilor Catherine Workman

Staff Present

Rhett Lamb, Community Development Director
Tara Kessler, Senior Planner

1. Roll Call

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

2. January 13 Meeting Minutes

A motion was made by Councilor Phil Jones that the Joint Committee accept the January 13, 2020 meeting minutes. The motion was seconded by Councilor George Hansel and was unanimously approved.

3. Continued Public Workshop:

a) **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 began by reviewing the item before the committee, and providing a history on the proposed ordinance for the new committee members. She explained the city has a zoning code, which dictates where certain land uses are allowed. The current zoning code was last updated in the 1970's and needs to be modernized. The City has received applications for congregate living social service uses (e.g. homeless shelters, residential care facilities, etc.) and the zoning code does not have these uses outlined. The City Council directed staff to develop an ordinance addressing these uses with some conditions and criteria attached to these uses.

The first public workshop on this item was in September 2019. Ms. Kessler stated when a zoning ordinance is amended it first gets introduced to City Council and there will be a public workshop with the Joint Committee - the role of the Planning Board in this setting is to vote if this ordinance is consistent with the master plan and the PLD recommends a public hearing before City Council be scheduled by the Mayor. The ordinance would go to the PLD Committee for a recommendation to City Council and the final step would be adoption by City Council. The process, at its shortest, takes about three months, but it could carry on depending on how long it will stay in the public workshop phase.

Ms. Kessler stated that staff is proposing that this ordinance be folded into the Unified Development Ordinance (UDO) project. She added the edits from today would be included in the UDO and brought back to the Joint Committee at a later date.

Ms. Kessler referred to page 12, which refers to the uses being introduced with definitions. There are nine of them, two are currently uses that exist; group homes and lodging house. There are however, amendments being proposed for both.

The proposed Congregate Living Uses are:

Homeless Shelter, Domestic Violence Shelter, Residential Care Facility, Residential Drug and Alcohol Treatment Facility, Group Home, Lodging House.

The amendment being proposed for Group Home is to place a cap on the number of residents, which would be between 5 and 16 people. There will also be a limit for one Group Home or Lodging House per parcel. This is an attempt to manage density.

Ms. Russell Slack asked whether there was a cap on Homeless Shelters. Ms. Kessler answered in the negative. Chair Bosley asked whether this was unusual. Ms. Kessler stated they have not seen this in other communities but have not targeted their research to identify communities that place a cap. Ms. Russell asked whether staff could look into this.

Ms. Somers asked whether there was also going to be a cap on the number uses in an area. Ms. Kessler stated that staff has not proposed a cap on the number of uses allowed in a given area. She noted that density is currently controlled by minimum lot sizes. In Keene's zoning code, a single-family dwelling unit is for anyone related by kinship plus no more than four unrelated persons. Depending on the zoning district, a lot must be a minimum size for a dwelling unit. For instance, it must be at least 10,000 square feet in the Low Density District. In districts that allow for multi-family dwellings, additional land area is required for each additional dwelling unit.

Chair Bosley asked about the number of uses per region and whether there was going to be a cap on that. Mr. Lamb stated zoning does not place a number on certain types of uses.

Councilor Jones stated he was concerned about the area at Maple Avenue and Court Street, and also where Park Avenue meets Summit Road. He feels that these areas should be zoned differently to better reflect the nodes that are described in the Master Plan. He asked staff to look at this and felt they should be zoned as something else. Mr. Lamb stated the Comprehensive Master Plan identifies these areas as areas where unique area planning ought to take place, perhaps a more refined commercial zoning. He stated this is an item that could be tabled to be discussed later.

Councilor Greenwald asked about abutter input. Mr. Lamb stated this is an issue that will be discussed under the topic of approval and granting of license.

Ms. Kessler went on with her presentation and noted the other uses being proposed under Social Services are Food Pantry, Drug Treatment Clinic, Group Resource Center (was known as Social Service Center).

Ms. Kessler referred to a table included in the Board's packet that displayed the zoning districts where the uses are proposed to be allowed, and the process by which they would be allowed. She reviewed this table with the Committee.

Ms. Kessler referred to Page 40 of 43 of the meeting packet, which addresses the proposed Conditional Use Permit Criteria. She stated that there appeared to be general consensus on the proposed criteria at the last meeting. However, staff has added the statement that the Planning Board may impose conditions to mitigate adverse effects on abutting properties.

Councilor Jones asked whether a conditional use permit carries over or whether it ceases with new ownership. Ms. Kessler stated there is no end to it unless they are in violation of the conditional use permit. Mr. Lamb added conditional use permits are like variances and those conditions carry with the property. There is the possibility for site plan revocations as well as conditional use permits – this is not a common occurrence but it can be done through code enforcement. Ms. Kessler stated there is also an appeal process through the superior court within 30 days of the Planning Board decision.

Ms. Kessler then addressed the topic of requiring an operating license for some of these uses. This operating license would be issued by the City Council and would need to be renewed each year. The discussion related to this item would be to remove the section of City Code relating to lodging house licenses, which are currently required, and to replace this section with congregate living social service operating license. This new section of code would apply to all the majority of the congregate living / social service uses including but not limited to group home and lodging house. Initially, staff proposed that this would be a license issued administratively through the Community Development Department but there has been preference expressed by the Joint Committee this should be done by the City Council.

Ms. Kessler stated that the primary intent for the operating license is to ensure that there is an annual inspection conducted of the facilities to ensure they are adhering to the building, fire, and life safety codes. There is license application criteria that is proposed. Ms. Kessler reviewed this criteria with the Committee. These licenses are proposed to go before the Planning Licenses and Development (PLD) Committee for review, as lodging houses do now, and the Council will have 30 days to act on the license

application. Ms. Kessler estimated that there could be close to 20 or 30 of these applications before PLD Committee each year. Originally, the draft ordinance stated they would expire on March 1 of each year but the City Clerk has requested this be changed to July 1. Ms. Kessler stated staff would continue to recommend the operating license be addressed administratively but ultimately it would be up to this Committee and City Council.

Mayor Hansel clarified the reason for the annual operating agreement is to make sure all the life safety aspects are complied with. Mr. Lamb stated this is the primary element but also to verify that the facility is in adherence with their submitted/approved operations/management plan. Chair Bosley asked if someone was not adhering to the plan what the path of correction will be. Mr. Lamb stated any enforcement action that would need to take place would come through the conditional use permit process; enforcement is much better addressed through RSA 676.

Councilor Greenwald noted that prior experience tells him the revoking of an operating license is never easy and felt it was important for neighbors to have a voice before the process starts.

Mayor Hansel stated he agrees with Councilor Greenwald and added that placing the emphasis at the Planning Board level is important, giving everyone a chance to weigh the impacts of a proposed use and impose the necessary conditions. The licensing is to make sure life safety regulations are adhered.

Ms. Russell Slack clarified the abutters will be noticed only once. Ms. Kessler agreed that abutters would be notified through certified mailing prior to the public hearing to consider the issuance of a conditional use permit. Chair Bosley asked how an issue would be brought to the Planning Board. Mr. Lamb stated it would be complaint driven in the form of a letter or a phone call to staff, which will then be brought before the Board.

Vice-Chair Cusack asked whether there was an appeal instead of going through the court system. Mr. Lamb stated the Council cannot override the decision of the Planning Board, it will ultimately have to go before the superior court.

Ms. Somers clarified it was through the licensing the City would try to manage the day-to-day operation and this won't impact the conditional use permit. Ms. Kessler stated the operating license would focus on whether the applicant is adhering to what they have put forth as their operational plan and life safety plan. The conditional use permit on the other hand would focus on whether this use is appropriate for a certain location.

Ms. Kessler went on to address the topic of Group Homes – this use is currently allowed in High Density, High Density 1, Low Density, Low Density 1, Medium Density and Rural. With this proposal, it would be allowed in High Density, Medium Density, Office and Transition. She explained the reason for this change is because allowing 5–16 unrelated individuals in a single dwelling would be introduction of density in the more low density areas, which may not be consistent with those zoning districts. Rural, Low Density, and Low Density 1 only allow for single-family homes as a result Group Homes were removed from these districts. Today, a group home could exist in any zoning district that allows for single-family homes but it is limited to four unrelated persons. A group home, as proposed, would allow for between five and sixteen unrelated persons. This use being proposed in High Density, Medium Density, Office, and Transition because these districts currently permit multifamily dwellings

in addition to single-family homes. The Office District (portions of which are proposed to become the Transition Subdistrict) allows for many different type of uses, including multifamily. Staff has heard from residents of this district that they are not in favor of allowing for group homes in this area. However, the density that residents are concerned for is already allowed today.

Ms. Russell Slack asked where Group Homes are located now and how many the city had. Ms. Kessler stated it was difficult to place a number as Group Homes are not currently licensed by the State.

Ms. Kessler then talked about the location for Homeless Shelters – when this ordinance was first proposed this use was to be located in Central Business Limited or Commerce Districts. She displayed the area of these districts on a map. She noted that the proposal is to allow for this use in the proposed Downtown Growth Subdistrict and Commerce District. She displayed these areas on a map and compared the differences between Central Business Limited and Downtown Growth.

The Chair then asked for comments from the public.

Mr. Steve Bragdon of 51 Railroad Street asked how someone appeals the license. Mr. Lamb stated the intent was there would be communication to the City Manager's office or the Community Development Office and it will be raised as a compliance issue before the Planning Board; an applicant has to have both approvals, the conditional use permit as well as the operating licensing. If there are compliance issues with the operating license then it becomes an issue with the conditional use permit. Mr. Bragdon felt this should be separated out. Mr. Bragdon raised concern with locating group homes in Office Districts – group homes are there overnight but not offices.

Anthony Tremblay of 67 Summer Street addressed the committee next and stated at the offset of this item he did not hear that abutters would not be notified during license renewal. Mr. Tremblay stated he heard staff say notifying abutters would be onerous and he felt it would not be. He stated this was a significant issue and did not feel abutter voice will be properly heard if they could only be heard during the conditional use permit application process – abutters are the ones living with a group home 24/7.

Steven Chambers of 17 Lamson Street stated he represents the homeless and stated there is a way to house the homeless population and not let property values decrease.

Jan Peterson, Chair of the 100 Nights' Board of Directors, stated she was glad to see the clarification between license and the conditional use permit. She thanked staff for all their hard work. She stated she does not quite understand the due process for licensing. Ms. Peterson went on to say if an entity was going to invest couple of million dollars constructing a facility they wouldn't want to see the abutters complain about all different type of issues. She felt working on solving the social problems that exist in our town was important.

Mr. Carl Jacobs, Board member for the Serenity Center, was the next speaker. Mr. Jacobs referred to language, which calls for one lodging house per parcel and asked for clarification of that statement. He stated he was not sure what was behind this statement. Ms. Kessler stated this has to do with density; there are ways this issue could be addressed – one way would be to place a cap on the number of people, which staff felt would be limiting. Hence, staff proposes one unit per parcel as long as the minimum lot size is met for that district. Mr. Jacobs asked whether this implies there could only be one structure or

whether there could be multiple structure on a parcel. Ms. Kessler stated with respect to residential dwelling units, the city does not permit any multi-family units to be detached buildings.

Mr. Tom Savastano of 75 Winter Street stated he has invested a lot into his property and did due diligence when purchasing his property by finding out what zone his property was located in and working within those guidelines (property is located in the Office District). He referred to Section 102-601 of the Zoning Code as it related to the Office District.

Mr. Savastano stated he has worked in social service and stated that group homes are not a bad thing. He stated his main objection is the number of people being proposed; five or more unrelated people but noted there is now a limit of 16, which he felt was far too many. He felt the number should be five or less and referred to the guidelines for single-family homes that have been discussed and felt the number being proposed will take away from the residential feel of this district. Mr. Savastano felt group homes should also be considered in other districts not just the proposed Transition Subdistrict.

Mr. Savastano reiterated this operation will be 24/7 and will change the character of the neighborhood. He added he has paid more than \$100,000 in taxes since moving here five years ago and was committed to this community and felt what is being proposed is a substantial change and opposes it but will be in support if it was five or less individuals.

Councilor Bosley clarified the maximum of 16 being proposed is not a blanket number and will be subject to fire and life safety issues and will be subject to the number the Fire Department proposes. Ms. Kessler stated this number is proposed as the maximum for group homes based on building code classifications. When a residential structure has an occupancy that exceeds 16 unrelated persons, it moves from a residential to an institutional focus. The Chair clarified if there was a 1,000 square foot building would the same amount of density be permitted compared to if it was a 3,000 square foot building. Ms. Kessler stated the number of occupants per the Zoning code will not be restricted based on the size of the building; however, there may be fire or life safety codes that limit occupancy based on the size or configuration of a building. She added that multi-family home is an allowed use in the Office District and that this use could promote the same type of density as a group home with 16 residents.

Mr. Peter Espieffs of 29 Middle Street felt what is being proposed will turn this area into a “chicken coop” district and will destroy this area. He did not feel the existing zoning was outdated and did not feel the city could refer to the zoning as outdated by just announcing that it is outdated. Mr. Espieffs felt when changes are made to this district the city will be affecting important locations such as the newly constructed courthouse and library. He questioned whom the city will assisting with “opportunities for use” – would it be developers, and felt it is not the developers the city should be considering and that the Council should be assisting with keeping Keene the way it is.

Councilor Johnsen asked Mr. Espieffs if the number was reduced as was indicated whether that would be acceptable. Mr. Espieffs stated he did not want this use, this district is fine the way it and asked to be left alone otherwise indicated this could become a legal issue.

Ms. Russell Slack asked whether staff used comparison from other towns, which might have group homes in an office district. Mr. Lamb stated the definition and density came from the consultant, which is a nationally based firm who is also assisting with the UDO project. There was also comparison made with other larger cities across New Hampshire and added most cities are grappling with the same

questions this committee is dealing with. Hence, there is no consistent definition or size for this use. Ms. Kessler added the guidance has been where single family homes exist is where group homes should exist.

Ms. Russell Slack stated having worked in group home settings felt 16 was a large number.

Councilor Johnsen stated she understands the number being five but asked where this maximum of 16 was coming from. Mr. Lamb stated it comes from experience the city has had with this type of use; applications that have been received for this type of use. He referred to a Group Home approved by the Planning Board in 2019 on Water Street – the Board authorized this use to be approved and the maximum occupancy here is 16.

Ms. Adams stated it seems some people would like to limit these groups, which are beneficial to this community. She stated this community needs to look forward and be more open to people who need our help – these are our neighbors. She cautioned the committee about limiting the numbers if there is a need.

Mr. Savastano in response stated his position is that he will be happy with group homes in the Transition District as long as it accommodated five or less people and questioned why it could not be located in other areas as well. Ms. Kessler stated the reason they are not being proposed in the Core, Growth and Edge Limited is because Group Homes are intended to operate like a single family home and single-family homes are not permitted in those districts. Chair Bosley clarified Group Homes will also be permitted in Office, Medium Density, and High Density. Staff answered in the affirmative. Chair Bosley noted those areas on the map, which refer to high density and medium density and explained group homes will be permitted in those zones. Mr. Savastano felt the larger size of group homes should perhaps be in those zones (Medium and High Density).

With no further comment, Chair Bosley closed the public hearing.

Ms. Somers asked whether any consideration has been given to limiting the number if it is a single family home versus a multi-family home. Mr. Lamb stated people who operate these units are intending this to be operated as a single family home with services (therapy, cooking, life skills etc.). Ms. Somers asked whether it was during the CUP process that life safety issues will be addressed. Mayor Hansel agreed it is during the CUP process that an applicant will be able to address the management plan for their use, number of occupants and this is the time the abutters will be able to voice their opinion. The annual operating license once a year is when the Fire Department would be able to visit these homes and make sure life safety measures are being met and being followed.

Ms. Russell Slack stated when she was talking about group homes she referred to homes that would accommodate various types of people- not just ones who have a drug problem for instance. She noted there are many types of group homes.

Vice-Chair Cusack recalled Mr. Savastano coming before the Planning Board during the library expansion project; he spoke in favor of the expansion but asked that it not be expanded to another abutting property because of the nature of that neighborhood which is a buffer. The Board agreed with this interpretation and looked at this neighborhood as a buffer. The Vice-Chairman asked whether the

proposed Transition Subdistrict has units that are five or less could be considered and as you move into the high density the number increases to 16.

Councilor Johnsen stated she is concerned about helping people who need this type of living arrangement but did not want to upset people who are already living there; she stated she could not support going from 5 to 16.

A motion was made by Mayor Hansel continue this public hearing to the June 8 meeting. The motion was seconded by Pamela Russell Slack.

Vice-Chair Cusack asked for guidance for the June 8 meeting. Mr. Lamb stated the intent of moving this item to June is so that everything that has been discussed so far could be merged into the UDO.

The motion made by the Mayor was unanimously approved.

4. Adjourn

The meeting adjourned at 8:15 pm.

Respectfully submitted,

Krishni Pahl,
Minute Taker

Reviewed and edited by Tara Kessler, Senior Planner