

City of Keene
New Hampshire

JOINT PLANNING BOARD/PLANNING, LICENSES & DEVELOPMENT COMMITTEE
MEETING MINUTES

Monday, August 10, 2020

6:30 PM

Remote Meeting via Zoom

Planning Board Members Present:

Doug Barrett, Chairman
Mayor George Hansel
Michael Burke
Gail Sommers
Pamela Russell Slack
Andrew Weglinski
Councilor Michael Remy

Planning Board Members Not Present:

Chris Cusack, Vice-Chair
David Orgaz
Tammy Adams, Alternate
Emily Lavigne Bernier, Alternate

Planning, Licenses and Development

Committee Members Present:

Councilor Kate Bosley, Chairman
Councilor Mitch Greenwald
Councilor Philip Jones
Councilor Gladys Johnsen
Councilor Catherine Workman

Staff Present:

Rhett Lamb, Assistant City Manager /
Community Development Director
Mari Bruner, Planner
Tara Kessler, Senior Planner
John Rogers, Building and Health Official
Med Kopczynski, Director of Economic
Development and Special Projects

1. Statement of Authority to Hold Remote Meeting

Chair Bosley began the meeting by reading the following statement with respect to holding remote meetings: *“In Emergency Order #12, issued by the Governor of the State of New Hampshire pursuant to Executive Order #2020-04, certain provisions of RSA 91-A regulating the operation of public body meetings have been waived during the declared COVID-19 State of Emergency. Specifically:*

- *The requirement that a quorum of a public body be physically present except in an 18 emergency requiring immediate action under RSA 91-A:2, III(b);*
- *The requirement that each part of a meeting of a public body be audible or otherwise 20 discernible to the public at the location specified in the meeting notice as the location of the 21 meeting under RSA 91-A:2, III(c).*
- *Provided, however that the public body must:*
 - *Provide access to the meeting by telephone, with additional access possibilities by 24 video or other electronic means;*
 - *Provide public notice of the necessary information for accessing the meeting;*
 - *Provide a mechanism for the public to alert the public body during the meeting if 27 there are problems with access; and*
 - *Adjourn the meeting if the public is unable to access the meeting.*
- *All votes are to be taken by roll call.*
- *All board participants shall identify the location from where they are participating and who is present in the room with them.*

2. Call to Order & Roll Call

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

3. Approval of Meeting Minutes - July 13, 2020 meeting minutes

Pamela Russell Slack offered the following corrections:

Page 2, Line 56 – replace the word meeting with the word “meetings”

Page 3, line 97 – change the language to read as “there is a proposal to use”

A motion was made by Councilor Mitch Greenwald that the Joint Committee accept the July 13, 2020 meeting minutes as amended. The motion was seconded by Councilor Phil Jones and was unanimously approved.

4. Petition – Objecting to Land Use Code Discussions over the Zoom Platform

Chair Bosley began by saying the committee has two items on the agenda: the first is a referral from City Council and the second is presentation from staff regarding the draft Land Development Code. She noted there would be time for committee input after each item, public comment will be taken at the end of the meeting. She noted the final item is the topic related to social service and congregate living uses. Staff will provide an overview of the comments received on this topic since the spring of 2020. Public comments on this topic will be limited to three minutes. This discussion will continue to the next Joint meeting in September. The Chair noted for the public who would like additional questions answered, staff would be conducting two public info sessions via zoom (a toll-free telephone option is also available) meetings this week; Wednesday, August 12 at noon and Thursday, August 13 at 6:30 pm.

Chair Bosley referred to a letter and petition, which was submitted to Council by Peter Espiefs and was referred to the Joint Committee. This petition, which is undersigned by 8 property owners of the neighborhood between School and Court Streets states that the current zoom meetings are not adequate for a public hearing. The Chair reminded the committee the draft Land Development Code is not yet in a public workshop or a public hearing process and that the public workshop phase will not begin until the October meeting. The Chair recommended that the petition be accepted as informational and a motion be taken to that end.

A motion was made by Mayor Hansel to accept the letter as informational. The motion was seconded by Councilor Michael Remy.

Chair Greenwald stated he agrees with Petitioner Peter Espiefs that this process ultimately requires public input. The zoom process was the best option the city could come up with but felt this ordinance is important and public face-to-face input is necessary. The Councilor suggested various locations for public meetings such as the Library, Keene Middle School. Mayor Hansel agreed with Councilor Greenwald; he suggested the public could sign up where numbers can be kept at an acceptable level and asked staff to look at some creative methods.

Mr. Tom Savastano a signer of this letter asked to be heard. Mr. Thomas Savastano of 75 Winter Street addressed the committee next. Mr. Savastano stated he had discussed today’s meeting with Peter Espiefs who had indicated he does not know how to log into zoom. Mr. Savastano stated he had provided Mr. Espiefs with the phone number should he be able to call into the meeting. He

added this goes to the point about how some residents are not technologically capable of connecting in this manner and extended his appreciation to Councilor Greenwald's understanding of this.

Chair Bosley noted she sees Councilor Clark's hand raised and asked whether he would be considered a member of the public for this session. Mr. Lamb explained because there is a motion already made and seconded, other councilors will not be contributing to it at this time.

Mr. Lamb noted as the city looks at other options for meeting in person, he wanted to make it clear the city is not going back to the way it was prior to March 2020. In all likelihood, the city would be looking at alternative ways to get the message out and make sure people are safe while they contribute in person. However, there is no way to guarantee the safety of the public who participates in in-person public hearings, and without other means of participation (e.g. telephone or zoom) this would likely limit public access to these public hearings as people may not feel safe participating in person. Mr. Lamb stated the only way to guarantee that everyone's issues can be solved is to wait until Covid 19 is no longer an issue which could be a long way off.

Councilor Jones stated a motion should not have been made as that is now preventing Councilor Clark and the public from addressing the committee. Chair Bosley noted a councilor could not speak at a committee meeting once a motion is made, as they would have an opportunity at the next Council meeting to make their comments. It is not the case in this scenario and felt it would be prudent to let Councilor Clark speak. Mr. Lamb agreed this is a different setting and stated his prior comment was incorrect. Councilor Greenwald disagreed – Mr. Lamb stated at a Joint Committee meeting the rules are that of the Joint Committee and they do not fall under the Council Committee rules. He indicated because this motion is not going before the City Council, and because Councilor Clark will not be able to make his comments before the Council, these are the reasons he may be permitted to speak and it is within the rules of the Joint Committee. Councilor Greenwald felt the easiest solution would be for the Mayor to withdraw his motion. The Mayor stated if the Chair decides Councilor Clark can speak, he should be able to.

Councilor Clark stated Mr. Espie's not being present today goes directly to the point of his letter and noted the letter is written on a typewriter. He noted it is unknown how many people we are losing because of technology. He stated he understands the city wants to keep this process moving but did not feel a little longer would be a bad idea so as to make sure citizens are not left out of the process.

The Chair asked for additional public comments. There were no other public comments.

The motion made by Mayor Hansel carried on a unanimous roll call vote.

Ms. Russell Slack asked staff to go over the dates of the public hearing.

Mr. Lamb explained as follows – he went over the schedule approved by the Committee in May. The months of July, August and September include meetings and public info sessions which are informational and not official public hearings. Once the current draft is submitted as an ordinance to be considered for adoption at the end of September, the official zoning amendment process will begin. There will be a public workshop process before the Joint Committee, followed by a public hearing before the City Council. The schedule indicates the public workshops will begin in

October and wrap up by the end of November (4 public workshops plus the one in December), if the proposed schedule is adhered to.

5. Review of Preliminary Draft Land Development Code

- i. Staff Presentation on Proposed Changes in Draft Code**
- ii. Questions and Comments on Draft**
- iii. Upcoming Public Info Sessions**

Senior Planner Tara Kessler addressed the committee next and stated on July 13 a preliminary draft was submitted to the Joint Committee for review and public comment. She indicated there would be multiple opportunities for public comment. Ms. Kessler stated today's presentation focuses on select topics/chapters of the preliminary draft code. These topics include: the proposed downtown zoning districts, permitted use chapter, Sustainable Energy Efficient District, SEED Overlay District, congregate living and social service uses, solar energy system uses, and application procedures.

Mr. Kopczynski addressed the committee and began by saying Council charged staff with a task of creating an ordinance that has a number of objectives. In the Building Better Together Project, specific elements have been laid out to establish a more simple, efficient and thoughtful process for development to occur in Keene. He noted staff was also charged with introducing form based zoning and standards into the downtown. Midway through this process the Council also charged staff with coming up with standards related to congregate living and social service uses. There have been many goals but the main one has to do with simplifying the process so that an average person would have a better idea of what the rulebook is for development purposes.

Councilor Jones asked how many ordinances would be available at the end of September. Ms. Kessler stated the draft Land Development Code would be submitted as its own ordinance. In addition, amendments would need to be made to the existing City Code of Ordinances. Specifically, Chapters 102, 70 and 54 would be removed, and amendments would be made to Chapters 2, 18, 46, and 98. The third would be related to Congregate Living and Social Service Uses, as a draft Ordinance was submitted last fall for the introduction of these uses into the Zoning Code, and the content of this Ordinance has been merged into the draft Land Development Code.

Ms. Kessler then talked about the update to downtown zoning. There are six new zoning districts being proposed: Downtown Core, Downtown Growth, Downtown Edge, Downtown Limited, Downtown Institutional Campus, and Downtown Transition. As part of this update to the downtown zoning, the Central Business and Central Business Limited zoning districts would be entirely replaced. Ms. Kessler referred to a map, which shows what the current downtown zoning looks like. She noted there are other districts such as Office, Commerce, High Density, Industrial that will be impacted by the proposed zoning update, in addition to Central Business and Central Business Limited.

Ms. Kessler went on to briefly describe the six proposed districts. She noted that Downtown Core encompasses the area directly adjacent to and surrounding Main St, and is the heart of the Downtown. Downtown Growth would surround the Downtown Core and would be along Gilbo Ave to the west and the former Railroad land to the east. Downtown Edge would serve as a transition zone from the downtown core to residential areas, but would be oriented for more commercial and mixed uses. Downtown Limited would encompass the area between Vernon Street and Mechanic St, which is Central Business District today. Downtown Institutional Campus

would encompass a portion of Keene State College's campus along Main St. Downtown Transition would serve as a transition zone similar to Downtown Edge, but would have fewer commercial uses and would be more oriented to residential uses.

Ms. Kessler stated with the proposed regulations, the city is trying to avoid a one-size fits all method and provide for more flexibility for development, knowing that Downtown Keene looks different depending on where you are. The dimensional standards being proposed are an effort, in most areas, to match what is on the ground for development to reduce the number of non-conformities. Ms. Kessler displayed a rendering of a block on Main Street and showed the different effect that the existing versus the proposed regulations would have on future new development. In other areas of the City, such as Gilbo Ave, the proposed regulations are trying to promote a pattern of development that is different than what is currently existing.

With the proposal to remove the Central Business Limited District, there are parcels that are not proposed to be included in Downtown Zoning, which would be impacted by the removal of this district. She referred to those parcels, which are outlined in black on the map, they include the current sites of Cheshire Village Pizza located at the corner of Ashuelot Street and West Street, Dunkin Donuts, located just east and the Fish Market/Dry Cleaner plaza, and the vacant parcel to the north of this plaza. Property owners of these parcels have been contacted regarding rezoning options if Central Business Limited were to be removed.

Councilor Jones referred to the Growth District and asked why this would not go one block further to Island Street and include the Colony Mill and the Center of Keene. Mr. Lamb stated as you make the transition from School Street to the Center of Keene, the uses are exclusively retail in nature. The building is surrounding by parking and there is more of a pedestrian orientation in this location. The work of the consultant was to identify these patterns and this is where they stopped the boundary.

Ms. Kessler went on to discuss the SEED Overlay District. She noted that this is an existing overlay district, which focuses on the promotion of sustainable energy efficient development and green building. This district was created in 2010 as an incentive zone in the downtown for property owners to take advantage of zoning incentives (e.g. increased height, more permitted use options, reduced parking) in exchange for building to a green building standard. Since it was adopted, there has only been one property that has been developed based on these standards (along Ralston Street). With the introduction of the new zoning districts, staff has identified there are less incentives to offer with respect to zoning flexibility. Staff is suggesting to reduce the area overlaid by the SEED District to the portions of the existing District that would not be impacted by the proposed downtown zoning districts. It will be important to revisit the SEED district as a future project to investigate how it might serve greater community goals and potentially a broader geographic area. Ms. Kessler referred to areas within the current SEED area that won't be impacted by the proposed downtown zoning. These include the area between Winchester Street/Davis Street/Ralston Street/Wilson St, and areas along Winchester Court.

Ms. Kessler then went over what will be allowed in a SEED District based on what exists now.

Mayor Hansel asked what the criteria was to qualify for this flexibility in zoning – whether it was LEED Certification. Ms. Kessler displayed the four options of green building codes/standards that are currently eligible for SEED incentives. Mr. Kopczynski stated he would like to have a conversation some time with the Joint Committee about the green building standards that could b

used. He indicated there are four standards but it does not require someone to LEED Placard, you just need to be eligible. Green Globes might be something that is currently out of stock. There is also the International Green Building Code. He added the others are labeling systems; you go through a system to see if you meet the required standards. Mr. Kopczynski added someone could build a green building but not meet the energy code. Mayor Hansel agreed the landscape with this item has shifted and suggested looking at minimum standards as well as looking at it in a more generic fashion. Perhaps, SEED could include solar as a component and have lesser flexibility and not tie it to these certifications which can be proprietary.

Councilor Greenwald felt SEED was a great idea, but the housing and building market has changed. What is being proposed is picking up some of these incentives. He noted he was not in favor of the SEED District as he felt it would not get used and noted to the Mills the only building that used the SEED but it is unaware if the standards are being followed through because currently there is no monitoring.

Ms. Kessler went on to discuss proposed changes to the Permitted Uses (Table 8-1 in the draft Land Development Code. She noted that there is a difference between the principal use of a lot and the accessory use of a lot. Principal use is the main or primary use of land or building. Principal uses are permitted by different mechanisms, such as by right (no approval needed – site plan or building permit might be needed). Another way a use could be permitted would be through the issuance of a Conditional Use Permit (CUP) issued by the Planning Board and a public hearing would be required. A use can also be permitted through Special Exception approved by the Zoning Board of Adjustment, and the applicant will need to meet certain criteria, and this too would require a public hearing. If a use were not listed on the Table, it would not be allowed unless that use is determined by the Zoning Administrator to be similar in nature and operation to an allowed use. Ms. Kessler noted the proposal in this draft code is to have all the standards related to principal and accessory uses, including use definitions, in one section for easy access. A Principal Use Table is also include in the draft for quick reference to the zoning districts where uses would be allowed.

A significant change with uses is the removal of the term “institutional use” from the use table and the proposal to replace it with a specific uses that fall under the category of institutional, such as community center, cultural facility, hospital, senior center, place of worship, private school. The proposal is to also retain the street list for institutional uses, as it is currently listed in the Zoning Code, which would continue to allow for institutional uses to occur on these streets.

Ms. Kessler reviewed some of the major changes related to uses by the types of zoning districts. She started with reviewing changes to residential zoning districts. She noted that most of the permitted uses in these districts are proposed to remain. The draft proposes the introduction of new uses such as solar energy systems, types of congregate and social service uses, community garden, and telecommunication facilities. An example of a use that is proposed to be removed from residential zoning districts is the “noncommercial raising of farm animals.” This would prevent the primary use of a lot being used for raising of farm animals. Farming would still be allowed use in the Agriculture District and Rural District. This change would not necessarily prevent someone from raising farm animals on their property as an accessory use, such as raising chickens.

Ms. Kessler noted that in the commercial zoning districts, many of the uses that are currently allowed would continue to be allowed. More specific uses such as art gallery, microbrewery, specialty food service, yoga studio (but not a large gym) are proposed to be added.

Ms. Kessler noted that there are multiple types of industrial uses in the Zoning Code today. The draft proposes to simplify these uses into two types: industrial, light and industrial, heavy. Light industrial uses would be those that have activities occurring entirely indoors, and heavy industrial activities would have external site impacts.

Chair Bosley stated she had noticed institutional use was changed to specific uses and asked for instance where childcare center would be classified. Ms. Kessler stated daycare centers are proposed to be listed as a commercial use. Home-based daycare centers would be permitted as an accessory use. Chair Bosley noted Keene has working farms and asked which district that would fall under. Ms. Kessler farming would be permitted in the rural zone, agricultural zone and the definition would be in keeping with State Statute. The Chair clarified where a chicken coop would fall. Ms. Kessler stated it would be considered, as it is today as accessory to a residential use and asked for input from the Zoning Administrator, John Rogers. Mr. Rogers agreed with Ms. Kessler that a chicken coop would be an accessory to a residential use unless someone starts raising enough chickens where it then turns into a commercial venture.

Chair Barrett referred to the issue with street list and asked if institutional use is no longer a use, would all of the uses under the category of institutional be allowed on the streets on the street list. Ms. Kessler explained that the institutional street list is maintained under the same street list as it exists today and any of the use listed under the category institutional uses would be allowed to occur on these streets, regardless of whether they are identified as allowed in a specific zoning district.

Ms. Kessler moved on to describe the new category of uses called, solar energy system uses. A solar energy system is not an allowed principal permitted use under the current Zoning Code and are currently only allowed as accessory uses. The draft code proposes to establish small-, medium-, and large-scale solar energy system uses, which vary by size, the districts they would be allowed in, and the review process by which they would be permitted. These would be allowed as accessory uses with some limitations placed on height and setback. Ms. Kessler noted the draft proposes to allow for small-scale ground mounted solar energy systems (less than 2,000 sf in size) as a principal use in all districts. A medium scale (between 2,000 sf and 1 acre in size) ground mounted array would be allowed as a principal use in all districts through a CUP process, before the Planning Board at a public hearing. A large-scale (greater than 1 acre) ground mounted solar energy system would only be allowed in some districts, rural, agricultural, and industrial and industrial park through a CUP process, before the Planning Board at a public hearing. Large scale systems would need to be located on parcels no less than five acres in size, and a 50 foot setback from property lines and roads would be required. Visual buffers would also be required. A site would need to be restored if decommissioned or abandoned, and security would be required for site restoration.

Councilor Greenwald stated keeping energy goals in mind he hoped at least the smaller scale solar projects could be exempted from the historic district review process to allow for rooftop installations in the downtown area. Ms. Kessler stated she failed to mention, staff is recommending solar installation be approved administratively rather than go before the Historic District Commission for most systems, and, if the array is not visible from a public way it would be exempt from review.

Ms. Kessler went on to describe the proposed congregate living and social service uses. She explained that today the Zoning Code does not include uses that address the modern types of congregate living and social services that are either seeking to locate in Keene or currently exist as legally nonconforming uses, such as residential care facilities, homeless shelters, food pantry, etc. Currently, group home and lodging house are permitted uses in the Zoning Code and allowed in various zoning districts in the City. The City has experienced a few instances where an applicant was seeking to operate a use as a group home, but the proposed use was more similar to a residential treatment facility, which is not an existing use. The City Council directed staff to draft an ordinance that would establish clearly defined categories of congregate living and social service uses as well as processes and criteria for how these uses would be reviewed and approved. Ms. Kessler noted that a draft Ordinance was submitted in September of 2019, which proposed to introduce these uses into the current zoning regulations. As there was close overlap between the Land Development Code project, the Joint Committee decided that the content of this draft ordinance should be merged into the draft Land Development Code.

Ms. Kessler went over the congregate living uses outlined in the draft are as follows: homeless shelters, domestic violence shelters, residential care facility, residential drug and alcohol treatment facility, group home (5-16 residents) and lodging house. She noted the proposed social services uses include food pantry, drug treatment facility, and group resource center.

Ms. Kessler then went over a table displaying where these uses are being proposed to be permitted (either by right or by conditional use permit) in the city. The table also outlines whether a particular use would require an annual operating license from the City Council. The two uses that would not require this license or a conditional use permit are the food pantry and domestic violence shelter. Under the current code a fraternity and sorority is considered a lodging house and in the preliminary draft code, fraternities and sororities are proposed to be a separate use and located in the proposed Downtown Institutional Campus District.

Ms. Kessler went on to say staff has received number of comments from citizens. She provided an overview of the comments received since March of this year, which are listed below.

- Concern for the introduction of Group Home & Lodging house into the Proposed Downtown-Transition District and Existing Office District
- Interest in reducing the max # of residents in a group home and lodging houses
- Specific proposal to reduce from 16 to 5 persons in Downtown Transition District
- Interest in limiting the number of beds in homeless shelters
- Concern for the introduction of Lodging house & Domestic Violence Shelter into the Medium Density District
- Concern for impacts to property values, increased traffic, reduced property standards, etc. that this category of uses would have on certain neighborhoods
- Concern for public health impacts of congregate living uses, such as spread of COVID 19
- Interest in requiring abutter notice for renewal of operating license
- Interest in accelerating the approval of these uses so that Hundred Nights can identify new site

In an effort to address some of these concerns, staff has been looking at whether some of these uses would be consistent with the underlying zoning district. An example, would be including lodging house as a permitted use in the Medium Density District. Staff included this use in this District following interest in some Joint Committee members in seeing lodging house being

allowed in more areas of the City as another option for workforce housing. In looking at the intent statement of Medium Density District and the limits proposed for multi-family housing in this district, staff feels lodging house might not be a suitable use for this district with respect to density. She noted staff is looking at how to address density concerns for lodging houses and group homes in other districts such as by increasing setbacks or minimum lot size, or by placing a cap on the number of beds.

This concluded staff comments. Chair Bosley opened the meeting for public comments and reminded the public of the guidelines she established at the start of the meeting.

Councilor Clark noted congregate living is a high-density use and noted he understands the city has high-density stock in lower density zones but these are mostly grandfathered. He stated the manner in which he understood that point is when a property was sold the use had to revert back to particular use of the zone. He added by placing high density uses in lower density districts, it reduces property values. He asked how allowing high density uses in lower density districts is justified. Ms. Kessler stated at the present time, lodging houses are not permitted in Medium Density; staff included this use in the Medium Density District in the draft at the urging of some City Councilors, who felt it might provide more housing options. Mr. Kopczynski added a legal non-conforming use runs with the land and does not change when ownership changes.

Ms. Sommers stated she wanted to be more sensitive for people who are not technologically able to connect and asked for this information to be clearer in documents made available to the public.

Mr. Tom Savastano addressed the committee again and called the committee's attention to the March 9, 2020 meeting minutes on pages 6 and 7 and referred to the following language:

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. He indicated he still feels the same way and the number should be kept to five or less and thanked Ms. Kessler for addressing this this.

He went on to refer to language on page 7 from the same set of minutes:

Councilor Johnson 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. Mr. Savastano stated Mr. Lamb was probably referring to 26 Water Street, which he indicated is property located in high density. He stated his concern is if 16 was the number approved for high density why this would be the number approved for the office zone or the downtown transition zone. He indicated he stands by what he has said previously in that the number should be greatly reduced and suggested that this be made part of the next proposal rather than reiterate the 16 maximum.

Loret Simonds of 79 Woodburn Street addressed the committee next. Ms. Simonds stated the ZBA is charged by the State to protect property values and drug rehabilitation wherever it goes reduces property value by 30%. She asked the committee to look carefully as to where the city would like to locate these facilities. Ms. Simonds stated she would be opposed to a facility such as that

locating in her neighborhood. She also felt domestic violence shelters need to be hidden and disguised as other uses to protect women and children who would use such a facility. She referred to the facility owned by MCVF they are housed in the basement of Superior Court, next to the Sheriff Department behind bulletproof glass and are dead bolted. She indicated she does not want to have police in her neighborhood.

This concluded public comment.

Chair Bosley asked the committee to review what has been said at today's meeting in time for the next Joint Committee meeting scheduled for September 14 at 6:30 PM.

6. Adjourn

The meeting adjourned at 8:31 PM.

Respectfully submitted by,
Krishni Pahl, Minute Taker

Reviewed and edited by Tara Kessler, Senior Planner