

City of Keene  
New Hampshire

**JOINT PLANNING BOARD/  
PLANNING, LICENSES, AND DEVELOPMENT COMMITTEE  
MEETING MINUTES**

Monday, January 11, 2021

6:30 PM

Remote Meeting via Zoom

**Planning Board Members Present:**

Mayor George Hansel  
Councilor Michael Remy  
David Orgaz  
Pamela Russell Slack  
Emily Lavigne Bernier  
Roberta Mastrogiovanni  
Gail Somers  
Andrew Weglinski

**Planning Board Members Not Present:**

Tammy Adams, Alternate

**Planning, Licenses and Development**

**Committee Members Present:**

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

**Planning, Licenses and Development**

**Committee Members Present:**

*All Present*

**Staff Present:**

Rhett Lamb, Community Development Director  
Tara Kessler, Senior Planner  
Mari Brunner, Planner  
Medard Kopczynski, Director  
John Rogers, Building and Health Official

**1. Statement of Authority to Hold Remote Meeting**

Chair Bosley began the meeting by reading the authority to hold remote meetings: 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.

**2. Call to Order & Roll Call**

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

**3. Minutes of December 14, 2020**

A motion was made by Mayor George Hansel that the Joint Committee accept the December 14, 2020 meeting minutes. The motion was seconded by Councilor Michael Remy and was unanimously approved by roll call vote.

**4. Continued Public Workshop Ordinances O-2020-10 & O-2020-11 – Relating to the establishment of the City of Keene Land Development Code and changes to the City's downtown zoning districts. Petitioner, City of Keene Community Development Department, proposes to update and unite the City of Keene's regulations related to land use and development, including the Zoning Regulations, into the City of Keene Land**

**Development Code; to establish 6 new zoning districts in Keene’s downtown area (Downtown Core, Downtown Growth, Downtown Limited, Downtown Edge, Downtown Transition, Downtown Institutional Campus); to remove the Gilbo Avenue Design Overlay District and the Downtown Railroad Property Redevelopment Overlay District; and, to modify the SEED Overlay District.**

**A. Review of Articles 23, 24, 26, & 27 of the proposed City of Keene Land Development Code**

Senior Planner Tara Kessler began by noting the ordinances referred to were submitted to the City Council last fall. Today is the fourth public workshop and she noted that there will be a second Joint Committee meeting this month on January 19<sup>th</sup> at 6:30 pm. Ms. Kessler reviewed the various ways in which the public can participate and follow along.

Article 23 – Floodplain Regulations:

Ms. Kessler noted that today these regulations live in chapter 54 of the City Code. They relate to development or redevelopment in the city’s floodplain/floodway. Having these regulations is a requirement if the city wants to participate in the National Flood Insurance Program.

The notable change to these regulations is the removal of the three foot limit – the current requirement that if there is loss of floodplain in an area such loss needs to be compensated elsewhere on a foot by foot basis. Currently this compensatory storage cannot be lower than three feet below the Base Flood Elevation of the area impacted and it has been indicated by developers that this is rather limiting. As a result, staff is suggesting removing this limitation but noted the provided storage still needs to be within the same hydraulic reach of the water body for which the floodplain encompasses.

Currently there are minor exceptions noted in the regulations - Sec. 54-62 provides exception for minor fill projects and Sec. 54-63 provides exception for minor building projects. Ms. Kessler stated currently minor fill projects (those projects that less than 500 square feet of fill) could potentially be exempt from floodplain regulations. A current concern is that there is no cubic volume provided for these minor projects. Staff is proposing is to remove these exceptions from the proposed code and provide an allowance that states that new construction or substantial improvement of a detached accessory structure of 500 square feet or less does not have to meet the elevation or non-residential flood proofing requirements for commercial buildings if certain minimum standards are met.

The other substantial proposed change is to the definition of “Substantial Improvement”. The current definition indicates if a property owner if making improvements to a structure in which the cumulative cost equals or exceeds 50 percent of the assessed value of the structure, they need to make their property be in compliance with the floodplain regulations and floodproof the existing structure. The issue with the current definition is there is no timeframe for which to track when these improvements are made. Hence, staff is proposing to include a timeframe of 5-years to this definition. If a property owner is making improvements during a 5-year period that exceeds 50% of the market value of the building or structure before the improvement or repair is started, then it is considered to be substantial improvement and would need to make sure they are in compliance with the flood plain regulations.

Ms. Kessler noted staff is trying to make sure the proposed regulations closely align with model floodplain ordinance. There is also a section which refers to Ash Swamp Brook flood area, which is no longer relevant and has been removed from the regulations.

#### Article 24 – Earth Excavation Regulations

These regulations are existing and relate to the commercial removal/excavation of earth. They are currently are located in Zoning Regulations as an overlay district adopted in 2008 and as part of the Planning Board Earth Excavation Regulations. These regulations are being merged into one Chapter under Article 24 in the proposed Land Development Code.

#### Article 26 – Appeals

Ms. Kessler noted that this Article outlines the appeal processes for different permits, approvals, and decision making bodies. All appeal processes are being placed into one chapter. The only change being proposed are the establishment of appeals processes for bodies, which are proposed in the draft land development code but don't exist today or for those processes that are not clearly laid out in the current regulations.

The proposed code establishes appeal processes for the proposed Minor Project Review Committee, which will act similarly to the Planning Board in the review of minor site plans, and the appeal process for decisions made by this Committee would be to the Planning Board per NH RSA 674:43(III). Decisions made by the Community Development Director would be appealed to the Planning Board. Decisions of the Zoning Administrator would be appealed to the Zoning Board of Adjustment.

#### Article 27 – Enforcement

Ms. Kessler noted that this chapter addresses the authorities for enforcing the regulations included in the proposed Land Development Code. The majority of the language included in this article was taken from existing regulations and state statutes. The Building and Health Official would have the ability to enforce regulations outlined in the proposed Land Development Code for land outside of the City right of way, and the Public Works Director would have the authority enforce the provisions of the Code specific to the public right of way. This authority exists today.

### **B. Continued Discussion on Congregate Living and Social Services**

Ms. Kessler stated at the November meeting there were certain questions raised by members of the public about the proposed Congregate Living and Social Service uses. There was a question as to whether the proposed regulations surrounding Congregate Living and Social Services were in compliance with the Federal Fair Housing Act (FHA). Ms. Kessler noted the Federal Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex, familial status, national origin, and disability (which includes those recovering from substance abuse). Ms. Kessler noted staff reached out to Camiros, the professional planning consultant firm the city worked with for its Downtown Form Based Zoning update to provide an evaluation of how closely the City's proposed regulations align with their understanding of/experience with how other cities across the country are regulating congregate living/social service uses, and their understanding of the alignment of these regulations with the FHA. Camiros conducted an

assessment of the City's proposed regulations related to Group Homes, which could include protected classifications. Ms. Kessler stated Camiros produced a memorandum outlining their professional assessment, which she clarified is not a legal opinion.

Councilor Greenwald noted it seems like the Joint Committee has lost the general public participation on this topic at this time and asked staff to verify whether the public was able to participate. Ms. Kessler performed a test with Attorney Mullins who was joining the session as a member of the public and it was confirmed he was able to participate. Councilor Greenwald stated he wanted to make sure at a later time the public does not indicate they were not able to join. Chair Bosley felt the first few topics discussed this evening with reference to earth excavation and flood plains might not have drawn as much of an audience.

Councilor Greenwald stated with respect to these zoom sessions the public at a later date might indicate they were not aware of what was going on. Chair Bosley stated she and the former Planning Chair tried hard to move to in person sessions but unfortunately the city is not at a point where there is a safe way to meet in person yet. She felt staff has made efforts for the public to join in and make the meetings and meeting content available to the public. Mr. Lamb stated there will be notices going out to the public during the remainder of the process on a broad scale when the item goes before the Council for a public hearing. He noted everyone with a mailing address was notified what was going on and how they could participate – this will happen again.

Ms. Russell Slack asked whether staff has been contacted by the public on this item. Ms. Kessler stated staff shares any written or emailed public comments with the Committee. Ms. Kessler stated there had been much comment received on Congregate Living and Social Service Uses earlier in the process, but last month there were comments that came in on Solar, Surface Water and Transition Zones. Director of Economic Development and Special Projects, Med Kopczynski, stated if this item was discussed a few years ago there would have been much more attention paid to floodplain regulations than what we experienced this evening; the comments are based on who is paying attention and what the stake is for an outcome. He indicated Council and staff have done everything they can to inform the public about this process.

Councilor Johnsen stated citizens in her ward have sent letters to the city about this item. Councilor Greenwald stated he wanted it to be clear staff has done everything it can and what he said is not in criticism, it is that some members of the public might not be familiar with the zoom process. The Councilor stated at the end of this process he would like to see a simple document that explains the benefits of the proposed code and the important information for property and business owners.

Councilor Jones stated this document is about simplifying the process and locating all information in one document.

Chair Bosley stated she has noticed about 30-40 people joining a session and as the committee starts discussing things like architectural regulations, the number gets reduced when they realize the changes being discussed might not affect their primary residences. People are joining when there are topics that affect them. Ms. Kessler stated Congregate Living and Social Service Uses will be discussed again on Tuesday, January 19.

Ms. Kessler continued with her presentation – she referred back to the memo from Camiros, discussed earlier. What Camiros noted in this memo is how the city is differentiating Group Home from Single Family Home is consistent with what other communities are doing and being in compliance with the Fair Housing Act. What the proposed ordinance is suggesting is three types of Group Homes. Under the current regulations, you can have four or fewer unrelated people living in a single-family dwelling. So a proposed Group Home that would have four or fewer unrelated people would be permitted as a single family dwelling, in districts where single family dwellings are permitted, with no separate approval process or required license.

The proposed ordinance includes two other categories of group homes – large and small. Group Home Small would be for four to eight unrelated people to live together and this type of Group Home will be permitted in any district where single family homes are permitted with a conditional use permit and would also require an annual license.

Group Home Large would be for nine to 16 unrelated people to live together and this type of group home would be permitted in some of the districts that allow for multifamily dwellings. This is to address the density in districts which focus primarily on single family homes. Ms. Kessler noted that the reason for creating these categories of group home was to provide opportunity for group homes of various sizes to be permitted in Keene, while addressing concerns that larger group homes would not be consistent with certain zoning districts that are promoting lower density development. The average household in Keene based on the U.S. Census is approximately 2.5 so if 16 individuals are permitted in a zone where single family homes are permitted, there is concern regarding traffic impact and other types of land use impacts.

Ms. Kessler stated that Camiros did address concerns that the language for Congregate Living and Social Service Use License lacked clarity and enough specificity. Ms. Kessler reminded the Committee of the proposed license for Congregate Living and Social Service Uses and noted that the new congregate living and social services uses would need a conditional use permit from the Planning Board. What staff is proposing is to replace the current Lodging House license with this new Congregate Living and Social Service Uses license. License regulations are located in Chapter 46 of the City Code of Ordinances, not in the proposed Land Development Code. The ordinance O-2020-10 did include proposed amendments to Chapter 46 that incorporated language for a Congregate Living and Social Service License.

Staff is proposing two different license application review standards for license issuance. One set would be for uses that would require a conditional use permit and the other would be for existing congregate living and social service uses that would not require a conditional use permit per the proposed Land Development Code. Ms. Kessler also noted that staff are proposing a schedule for when licenses will need to be renewed for each of the types of congregate living and social service uses.

Ms. Kessler noted that there were questions raised by the City Attorney regarding the existing appeal process for lodging house licenses and other City Council issued licenses. Staff will come back with a proposed recommendation regarding the appeal process for the licenses at the meeting on January 19.

Chair Bosley noted a staggered schedule to renew licenses was previously discussed. Mr. Lamb indicated because there are a category of new uses being proposed which are going to require

licenses (somewhere between 20-30 in a year), the suggestion is to stagger the issuance of these licenses.

Ms. Kessler noted currently the proposed language related to Congregate Living and Social Service Use license applications in O-2020-10, which was presented at the November 16 public workshop, includes a lengthy list of required application submission items. The most notable is the requirement to submit an Operations and Management Plan (which includes a security plan, life safety plan, staff training and procedures plan, health and safety plan, emergency response plan, neighborhood relations plan, building and site maintenance procedures). Homeless Shelters would be required to provide rules of conduct & registration system for guests and policies and procedures for denying access to the shelter.

Initially staff proposed that the licensing authority would hold the licensee or license applicant to what is outlined in their submitted Operations and Management Plan, with the understanding the Plan could be amended. Ms. Kessler stated the proposed license language does not provide much guidance for the licensing authority on how they would review and act on applications. To be clearer with this process, staff has created two categories of review standards. They differentiate between those uses that need a conditional use permit and those that do not.

If this ordinance is approved and a new group home is proposed, the owner would need to go before the Planning Board to obtain a conditional use permit before that use can be permitted. They will need to demonstrate that they meet specific criteria and submit a formal application and the Board will have to approve the conditional use permit with consideration given to land use impacts. If the use is approved, the owner would be required to maintain an annual congregate living and social service license issued by the City Council. Because obtaining this conditional use permit is a stringent process, staff felt it was important to align the initial and subsequent approvals of the congregate living and social service license with the terms and conditions of the issued conditional use permit. If the licensing authority questioned whether the terms of the conditional use permit were not being met, the application would be sent to the Community Development Department for enforcement action.

Chair Bosley asked whether the Operations and Management Plan will be submitted to the Planning Board for the conditional use permit and asked why this would be necessary when all these uses will require as license but not all these uses will require a conditional use permit. She asked whether it would not make sense to have the Operations and Management Plan submitted as part of the license application and not to the Planning Board. Chair Bosley felt the licensing authority should be put on notice when a new business obtained their conditional use permit from the Planning Board and the Operations and Management Plan should go to the licensing authority in the first year regardless of whether there is anything to review.

Ms. Somers asked whether the Operations and Management Plan would need to be submitted annually. Chair Bosley explained at the present time the City Council would decide annually through the license process whether or not the entity has met its Operations and Management Plan. She indicated what she would like is a discussion on whether the licensing authority should be given these plans in the first instance or whether they should be given to the Planning Board in the first instance.

Councilor Remy felt there should be some kind of discrete criteria, entities should be measured against – such as number of police calls etc. Chair Bosley stated she agreed and noted that they have heard from the public that they want to embrace social services but they want those services to be good neighbors. She feels the entities should be made aware of this criteria so the license does not get taken away when they don't meet those criteria.

Ms. Somers felt the license evaluation should be done at the beginning of the process.

Councilor Greenwald wanted the committee to give some thought to what it would entail to take someone license away – he felt the process should be something that is legally binding. Chair Bosley agreed and felt staff should be able to come up with language to address this and added the entity needs to be made aware of what this criteria is before they are issued the license and also given an opportunity to correct their errors.

Mr. Lamb felt the enforcement mechanism for uses that require a conditional use permit would probably be through the land use statutes which have a direct path to the Superior Court. Mr. Lamb noted not all entities applying for these licenses will be the same and hence not all the same criteria will apply. Hence, even though the city might want to be specific it would be also prudent to have some leeway for the Planning Board and licensing authority to make decisions based on circumstances of each entity. Chair Bosley agreed there should be some leeway but there should also be some basic general items such as hearing from the Fire Department and Police Department as to the number of visits so the public can be assured this is not going to negatively impact neighborhoods.

Councilor Johnsen felt along with this, there is also an education component that is necessary within the community. She also felt the measurement could have a positive component attached to it. Chair Bosley stated she has seen social service agencies that have opened in the community and because of good management, there has not been any issue with them. It is the hope that these agencies will be good neighbors but there has to be a way to manage irresponsible behaviors.

Mr. Weglinski noted many of the nonprofit organizations already have funding sources that require these rubrics and performance measures and asked whether the city could tap into those. Chair Bosley asked if Mr. Weglinski might be able to provide these rubrics to staff and added some of these organizations could also be for profit organizations.

Councilor Workman felt the more social service agencies that are successful the more negative stigma that could be taken away from the community. Having benchmarks and criteria from the outset will be important and will eliminate the reservations the neighborhoods would have and will help the business owners as well.

Councilor Remy felt it should not be the responsibility of this body to determine if an entity is meeting its goals. As much as it is might not be “fun” it is the responsibility of this body to limit the negative and that the neighbors are not harmed but not to make sure they are the best agency for the community.

Councilor Johnsen asked how the city can assist if an agency should start getting out of hand. Chair Bosley felt staff and the city attorney will need to determine what the committee's position is in this regard, what it is legally allowed to do. However, if the criteria are not adhered to what

provisions can be met to bring them back in compliance. Mayor Hansel stated he was struggling with what the criteria should be. He felt counting emergency service calls such as ambulance calls could have unintended consequences – it might make people not call for help when it is needed.

Chair Bosley stated maybe there could be a distinction between actual call for service versus an overzealous neighbor calling the police. She felt if there is a misuse of city services, then the city needs to be aware of this and would something that would flag a license for review. Mayor Hansel stated he would like to hear from staff as to how they plan on tracking this.

Ms. Kessler stated for an existing group home the license would be to evaluate their operation. The question is at what point can it be determined this use cannot go forward any more.

Ms. Kessler went over the criteria the licensing authority would use to review an initial or renewed license, which are listed below.

- *The use is found to be in compliance with the submitted operations and management plan, including but not limited to compliance with all applicable building, fire, and life safety codes.*
- *The use is of a character that does not produce noise, odors, glare, and/or vibration that adversely affects the surrounding area.*
- *The use does not produce public safety or health concerns in connection with traffic, pedestrians, public infrastructure, and police or fire department actions.*
- *The Licensing Authority may require conditions on a license as reasonably necessary to insure compliance with the requirements of this section. Failure of any Licensee to comply with such conditions shall be considered a violation of the license.*

She noted that staff is working on language for suspension and revocation

Ms. Russell Slack recalled an instance when the city council took away a license for a lodging house but wasn't sure what the exact details were but noted the council had no issue taking the license away because of what was going on inside the house. She noted she had no concerns with revoking a license but stated she would wait to hear back from staff but added this was a good proposal from staff.

Mr. Weglinski stated at time concerns from neighbors could be subjective but having something in line for the licensing authority would be viable.

Councilor Jones felt item #3 should include language with reference to quality of life. He further stated in the past there have been petitions for revocation and the council committee had asked for a report from the police and the issue has been that the actions that the complaints were about were not happening at the address and the police could not connect those actions to a particular address and felt this is something that should also be addressed.

Ms. Kessler next addressed the issue with a proposed schedules for licenses to be renewed based on the use type. When a use comes forward for a license it will first be reviewed by the licensing authority and would need to be renewed on the proposed date for this use to be renewed in the year following the initial license issuance date. As mentioned earlier, staff is proposing to stagger these renewal dates.



Chair Bosley noted in the past when it was just the lodging house license the Clerk's Office sent out reminders for renewals and wasn't sure if the Clerk's Office wanted to take on such a burden with the increase that is likely to be seen. She further noted based on the proposed calendar instead of just summer months, suggested group homes have its own month for renewal.

Councilor Remy suggested moving Fraternity/Sorority from June 1 to another date as they are often not around during this time.

Councilor Jones noted what is being referred to is the issuance dates, and at times there are applicants that show up the last week with their application and asked whether an expiration date can also be added to this list. Chair Bosley asked what happens if someone misses a deadline. Ms. Kessler stated at that point they will be operating without a license and their license will be revoked. Mr. Lamb added the first step would be a letter from the city informing them of their non-compliance with the conditional use permit. He added the enforcement process could take some time giving the applicant time to correct any issue. For an entity that does not require a conditional use permit – this is something that still needs to be addressed. He added it will take some outreach to get the entire process to work properly.

With that, Chair Bosley asked for public comment.

Councilor Johnsen asked whether public comment could be taken earlier in the meeting so the public does not have to wait until the end of session. Ms. Somers agreed with what was stated and added if there are multiple topics perhaps after the end of each topic, public comment could be taken. Chair Bosley asked for staff input on this suggestion. Ms. Kessler stated the reason for placing public comment at the end is to give time to review the material that would be commented on, however, if public comment is taken first there might be the need to place a time limit on public comment, and to also offer time at the end of the meeting for additional comment. Mr. Lamb stated this topic has been different because the material has been so large. He stated the next meeting would be the last of the review of the proposed Land Development Code and if the committee wanted to hear from the public first, it can be done. Ms. Russell Slack stated she was fine with the recommendation made to changing the agenda but did not feel any change should be made until a new chair is appointed to the Planning Board.

Chair Bosley was having technical issues, as a result Mayor Hansel took over the role of Chair. Councilor Workman suggested for the public notice to add an extra line to indicate that public comment will be followed by staff presentation at a certain time.

A motion was made by Councilor Remy to continue this public hearing to January 19, 2021. The motion was seconded by Councilor Phil Jones and was unanimously approved by roll call vote.

## **5. Adjourn**

The meeting adjourned at 8:35 PM.

Respectfully submitted by,  
Krishni Pahl, Minute Taker

Reviewed and edited by Tara Kessler, Senior Planner