

City of Keene
New Hampshire

HISTORIC DISTRICT COMMISSION
MEETING MINUTES

Wednesday, February 16, 2022

4:30 PM

**Council Chambers,
City Hall**

Members Present:

Andrew Weglinski, Chair
Russ Fleming, Vice Chair
Councilor Catherine Workman
Hans Porschitz
Hope Benik
Sam Temple

Staff Present:

Mari Brunner, Senior Planner
John Rogers, Interim Community
Development Director/Building and
Health Official

Members Not Present:

David Bergeron, Alternate
Peter Poanessa, Alternate

1) Call to Order and Roll Call

Chair Weglinski called the meeting to order at 4:30 PM. Roll call was taken.

2) Election of Chair and Vice Chair

Chair Weglinski announced the first order of business as elections for Chair and Vice Chair. Chair Weglinski made a motion to have Mr. Fleming remain on as Vice Chair. Ms. Benik seconded the motion, which passed unanimously. Mr. Fleming accepted.

Mr. Fleming made a motion to have Mr. Weglinski remain on as Chair. Mr. Porschitz seconded the motion, which passed unanimously. Chair Weglinski accepted.

3) Minutes of September 15, 2021

Mr. Fleming made a motion to accept the minutes of September 15, 2021 as presented. Mr. Porschitz seconded the motion, which passed unanimously.

4) Public Hearings:

- a. COA-2022-01 – 35-43 & 45-47 Main St – T-Mobile Telecommunications Installation – Applicant T-Mobile Northeast LLC, on behalf of owner Mitchell H. Greenwald Revocable Trust, proposes to install a telecommunications facility on the roof of

the existing building at 45-47 Main St (TMP# 575-025-000-000-000) and a generator on the property located at 35-43 Main St (TMP# 575-026-000-000-000). Both properties are ranked as Primary Resources and are located in the Downtown Core District.

Chair Weglinski read the above public hearing summary and asked staff for a recommendation on completeness for the application.

Ms. Brunner stated the applicant has requested an exemption from providing a material sample and staff recommend that the commission grant the requested exemption and accept the application as complete.

Chair Weglinski made a motion to recommend the application as complete. Councilor Workman seconded the motion, which passed unanimously.

Chair Weglinski opened the public hearing and invited the applicant forward to explain the project.

Amy White, on behalf of T-Mobile, introduced herself as the presenter for the installation of the wireless facility at properties 35-43 and 45-47 Main Street. She passed out plans for the commission, which included the elevation view, the site plan identifying the location of the property, the roof top view and the generator and enclosure details.

Ms. White explained that T-Mobile is proposing to install the wireless facility on two properties that are under contiguous ownership of Mitchell Greenwald Revocable Trust. The 6 antennas and 6 remote radio heads (RRHs) will be located on the rooftop of 45-47 Main Street. She added that there are 3 sectors of the antennas and each sector has 2 antennas and 2 RRHs, which will be located in two boxes that are stealth material on top of the rooftop. The antennas and RRHs will be connected via fiber cabling, which will be in cable trays running across the rooftop and down the side of the building, then along another rooftop and into the interior of the building at 35-43 Main Street. This is where the ground equipment will be located in the basement, which supports the antennas.

Ms. White went on to state that the applicant is also proposing to install a generator on the exterior of the property at 35-43 Main Street on the ground level behind a PVC fence, which will be fully enclosed in an area with an already existing fence.

Ms. White stated the enclosures are set back 16' from each edge of the roof. Placement includes one at the front of the property along Main Street and one on the rear of the property that abuts the parking lot. They measure 8' by 9'- 8" and stand 10' above the roof. The roof itself is a total of 50' above ground level and, with enclosures, it will be 60' above ground level.

Ms. White pointed out that when they designed the installation, they designed it with the understanding that it would be located within a historic district and made accommodations to minimize the visual impact. Some of the concessions that were made were reducing the size of the antenna from the standard 8' to 6', which allowed them to reduce the height of the enclosure. She further explained that they went with two enclosures as opposed to three. Two of the sectors

are located within one of the enclosures at the rear and the other is located in the enclosure near the parking lot. Ms. White went on to state that they set the enclosures as far back as they could without limiting propagation of the antennas. She explained that if they push the antennas too far back on the roof, the roof itself will create interference with the antenna and propagation of the signal. Ms. White continued to state that they also designed the boxes contiguously so they are the same size for symmetry purposes, and added that they could reduce the size of one of them by a bit more if desired.

Ms. White proposed that the enclosures be painted black, noting that in larger cities like Boston that's what's taking place with their historic buildings. She added that they are open to other colors and designs.

Chair Weglinski opened the floor for questions.

Mr. Temple asked what the minimum height of the enclosures is. Ms. White answered that they can't reduce the size any further, it's as small as it can be for the antennas and allows air circulation and room for the pipes that the enclosure is mounted to.

Mr. Fleming stated, when looking at the elevation plans, if the top of the box is 10' above the roof and inside the box there's an 8' by 9'-8" antenna assembly on a steel support, what is the advantage of going from an 8' to 6' antenna if the structure is 10' off the top of the roof anyway. Ms. White stated they would need a 12' box if they used an 8' antenna. She explained that the boxes need to have a steel frame to sit on which is approximately 2' of the 10' overall height. Mr. Fleming asked if the steel frame would be visible above the roof and Ms. White answered that it should not be visible.

Mr. Temple asked how far they could set the enclosures back before getting a compromised signal. Ms. White stated the plan is for them to be 16' back, which already impairs the signal but is the furthest back they can go. She explained that this placement is dictated by the propagation and the roof structure/framing, meaning they have to locate over the structural spans of the building so they can put the steel frame on to support the enclosure. The 16' placement will create shadowing which means the transmission from the antenna will hit the roof on the bottom propagation and degrade the signal.

Councilor Workman asked what material the concealment containers are made of and what other color options are available. Ms. White stated the boxes are made out of fiberglass, which is radio frequency transparent. She went on to state that the boxes are painted, therefore the commission can choose any color that can be replicated with paint. She mentioned that there are wraps as an option as well but she is not as familiar with them as they are a new product. Councilor Workman added that she's not a huge fan of the black coloring. Ms. White stated brick coloring/design is also an option.

There being no further questions, Chair Weglinski invited staff comments.

Ms. Brunner reviewed HDC regulations relevant to the application. She reported the first relevant standard as 21.5.4 which relates to utility, service and mechanical equipment. Section A of the standard states that mechanical equipment (e.g. HVAC units, transformers, etc.),

telecommunications equipment, and antennas shall be set back on the roof of the building so as to be minimally visible from the street, or ground-mounted toward the rear of the building set as low to the ground as possible and with appropriate screening or landscaping to minimize visibility. Ms. Brunner stated the applicant described thoroughly the location of the proposed antennas and RRHs on the roof of the building and the enclosures set 16' back from the front edge of the roof and 16' back from the rear of the building. She went on to state that the second half of the proposal is to install a generator along the north building façade of the Latchis Block building located at 35-43 Main Street, near the west/rear end of the building. She reviewed that the applicant proposes to place the generator in an existing fenced in area. There is currently a lattice-style wood fence that you can see through so the applicant is proposing to install a new PVC fence in a stockade style.

Ms. Brunner next reviewed the second standard, Section B, which states that new mechanical supply lines, pipes and ductwork shall be placed in inconspicuous locations and/or concealed with architectural elements, such as downspouts. She explained that the applicant is proposing to install hybrid fiber cabling in cable trays along the roof and the rear of the building and on the partial west elevation. In addition, the cabling is proposed to be painted to match the color of the underlying brick building to reduce its visual impact.

Mr. Fleming referenced page 8 noting the photo of the existing fence area where the generator is proposed to be installed and it appears there is a doorway there. He wondered if that was an egress that could potentially be blocked by the generator. Ms. Brunner stated that would be reviewed as part of the building permit application and if it was a concern the applicant would need to come back through the HDC process.

Chair Weglinski invited public comments. There were none.

Chair Weglinski closed the public hearing and began deliberations. Mr. Fleming suggested they discuss color if there are concerns. Mr. Porschitz had a question for Ms. White. Chair Weglinski reopened the public hearing.

Mr. Porschitz stated, with regards to the elevations provided, there were no pictures from the south coming up Main Street and wondered if that's because it isn't a concern. Ms. White stated she wasn't 100% certain but typically the engineers would provide simulations of all locations where the enclosures are visible. She stated it's possible that they provided only instances of prominent visibility and she will circle back with the engineering firm to get a certain answer. She added that it won't be more visible coming from the south because there's another property, 55 Main Street, on the corner.

There being no further questions, Chair Weglinski closed the public hearing.

Councilor Workman expressed concern over the color of the boxes due to their visibility, noting her biggest concern is the view from the parking lot at Lindy's diner and Gilbo Avenue. She stated there are hopes for future art corridor development in that area so visibility becomes important. She suggested a color that blends more with the current colors of the building, such as brick. Mr. Porschitz agreed with a brick color but without the pattern, suggesting maybe a

rust/brown color. Mr. Temple stated he does not like the brick and mentioned the Colonial Theatre has a bluish-gray color, suggesting they could possibly do a gray color but he would prefer not to do black. Ms. Brunner added that the Colonial Theatre color was purposely designed to stand out from the historic portion of the building. Chair Weglinski stated he would agree with not making it a brick pattern because they don't want to mimic the more historic part of the building. Councilor Workman added that she is not dead set on the brick and liked Mr. Temple's suggestion of a blue/gray color similar to the Colonial Theatre. Mr. Porschitz argued that the two cases are different and suggested they pick a color that's closer to the building color rather than mimicking the Colonial Theatre, as that's an entire big box addition opposed to two small boxes on a roof. Mr. Fleming agreed with Mr. Porschitz and stated he doesn't feel they have the mass to support a different color and would go with either black or a brick tone similar to the building color.

There was short discussion about visibility from the south. Chair Weglinski commented that it seems they may need a continuation of discussion for the next meeting.

John Rogers, Building and Health Official, recommended that they have the applicant bring in a sampling of possible colors for the commission to review. Ms. Brunner suggested the applicant could bring in renderings to show the different colors.

Chair Weglinski reopened the public hearing and asked the applicant if she would be able to make it to the March 16th HDC meeting and provide additional color samples and images. Ms. White stated she could attend the next meeting and bring additional photo simulations that include different variations of colors. She also stated she will bring in simulations with visibility coming from the south of the rotary. Chair Weglinski requested visibility from the south of the rotary and one more vantage point in between. Ms. White stated she will provide them with a brick/rust color option and a gray color option, as well as any additional color renderings.

Chair Weglinski closed the public hearing.

Mr. Porschitz made a motion to continue the public hearing for COA-2022-01 to the March 16, 2022 HDC meeting. Councilor Workman seconded the motion, which passed unanimously.

b. COA-2017-07, Modification #1 – 147 Main St – Building Demolition – Applicant Timothy Sampson, on behalf of owner 147 Main Street LLC, proposes to demolish the building located at 147 Main St (TMP# 584-060-000-000). The property is ranked as a Contributing Resource and is located in the Downtown Core District.

Chair Weglinski read the above public hearing summary and called upon staff for a recommendation on application completeness.

Ms. Brunner stated the applicant requests exemptions from submitting a site plan, architectural elevations, scale and massing depictions, and material examples as no new development is proposed at this time. Staff recommend that the Commission grant the requested exemptions, and accept the application as "complete."

Mr. Fleming asked staff if they would normally ask for a site plan, elevation, scale and massing depictions and materials examples to grant a demolition. Ms. Brunner replied that they would not, the aforementioned are general submission requirements for all major HDC projects. Mr. Fleming then asked for clarification on the recent changes to demolition rules within the historic district. Ms. Brunner explained that previously, the HDC had purview over all construction within the historic district; however, with the adoption of the Land Development Code the rules were changed so that only buildings that are 50 years or older go through the HDC and anything younger than 50 years would be exempt. Mr. Fleming asked if there were rules specific to demolition that were changed. Ms. Brunner stated because the construction of a new building is no longer under the HDC's purview, they removed the requirements that a demolition application include the plans for new construction. She went on to state that part of the reasoning behind the changes were due to the City establishing new form-based zoning districts downtown, which took over a little of what the HDC would have been reviewing.

Chair Weglinski made a motion to recommend the application as complete. Ms. Benik seconded and the motion passed. Mr. Fleming abstained. Chair Weglinski invited the applicant forward.

Timothy Sampson of Sampson Architects presented on behalf Mike Pappas, the owner of 147 Main Street LLC. He stated they are presenting an application to request demolition of the building located at 147 Main Street, which suffered a traumatic fire a number of weeks ago. He explained referred to a report from a structural engineer citing major damage to the building structure and deeming it unsafe per building code. He went on to state that they meet at least 2 of the 3 criteria set forth by the City for allowing demolition of a structure. The building has been deemed structurally unsound and retaining the resource would constitute economic hardship. He further explained that there have been questions about saving the exterior walls; however, the lateral stability of the exterior walls have been compromised. He noted that the exterior walls help form the structural system of the building in tandem with the interior structure, so one cannot be defined as compromised without also defining the other as compromised. He stated that attempting to save the exterior walls would complicate demolition and be a financial burden for the owner. Mr. Sampson stated their request is to take the building down in its entirety and be able to re-utilize the prominent site to its highest potential as one of the first new buildings downtown in a long time.

Mike Pappas, owner of the building, stated he and Mr. Sampson have talked about replacing the building with a new four-sided brick building potentially on the exact same footprint, unless expansion off the back side became an option to allow an elevator. He added that the new building would be fully armed with sprinkler systems and insulated up to today's standards. Mr. Pappas assured the commission that it is their intent to take note of the existing buildings downtown and make the new building fit in with architectural similarities. He mentioned that he owns the building next to 147 Main Street and has been following HDC guidelines steadfastly with that property.

Mr. Temple asked if they are anticipating the new building to be mixed use. Mr. Pappas stated they plan the first floor to be commercial use and the second floor to be higher end 1–2 bedroom units. He added that he is not certain which business will go in the building but is not a big fan of

having another bar. It was noted that the original intent of the current building was a grocery store. Mr. Temple stated on social media Keene residents have been sharing their memories of everything that inhabited the building in the past.

Councilor Workman asked why they were asking for demolition at this time if they don't have immediate plans for the new building, other than it being structurally unsafe. Mr. Pappas stated the building has been deemed unsafe and that is the reason for their request to demolish. He reiterated that he loves downtown, has lived there his whole life and intends to replace the building with one that matches the historical context. Councilor Workman requested confirmation that the safety of the building warrants demolition sooner rather than later. Mr. Rogers, the Interim Community Development Director and the Building and Health Official, stated if the building was not in the historic district, he as a building official would be ordering the building to be torn down, or shored up to save the building, if possible and not cost prohibitive. He added that this is based off of the structural engineer's report who had great access to assess the building with the use of the aerial bucket truck that was present. Mr. Rogers mentioned that the building is right at the property line downtown on both the front and side.

Chair Weglinski asked if there is any current requirement from the City to order them to demolish the building. Mr. Rogers stated there is not at the current time because the applicant was quick to get in front of the commission.

Chair Weglinski stated, although the report demonstrates obvious destruction to the innards of the building and some of the intersections which help support the exterior masonry walls, it indicates that there was little to no damage to the brick. He asked the applicant what the options are for saving the exterior masonry. Mr. Pappas stated they found at least one dozen cracks throughout the building, some from the fire and some from settling, and can't completely agree that the exterior has not been compromised. He went on to state that the inside is built as one package with the outside, so the bricks may be okay but the actual structure itself is unsafe. Mr. Sampson added that the report states "the exterior masonry wall does not appear to have been directly damaged by the fire; however, the lateral support provided by the roof framing system has been lost, resulting in compromised structural integrity of the exterior masonry walls."

Chair Weglinski stated he understands that they could potentially save the exterior walls as an option but it would be more expensive and time consuming. The applicant agreed.

Mr. Fleming asked if the structural engineer was aware that the building was a historic district building when doing his assessment, noting that he cited the international existing building code but failed to mention the chapter in the code that deals with historic buildings. Mr. Pappas answered that he doesn't believe the engineer was aware, he was simply asked to determine whether or not the building was structurally sound.

Mr. Temple asked if the historic district has an impact on the fire code. Ms. Brunner stated it is best to stick to HDC demolition standards and noted that the commission could ask the applicant to provide more information about the economic hardship if saving the building is desired. She reminded the commission that economic hardship is one of the standards by which demolition could be granted. Additionally, Ms. Brunner stated if the building poses a safety risk to the

public, demolition can also be granted. Mr. Rogers stated the existing building code gives some different allowances when renovating or doing additions for historic buildings but doesn't necessarily deal with demolition. He cautioned the commission to think about asking for additional information and suggested that if they do request additional information that it be conditional upon the building being shored up. This is important since it is unsafe and right up on the property lines with city sidewalks blocked off for safety concern.

Councilor Workman asked, if approved, how soon demolition of the building would begin. Mr. Pappas stated they would need to obtain permitting and signatures and they would need to act fast because it's unsafe and there is no roof currently, which is allowing for ice accumulation. Mr. Sampson added that the permitting process has begun so it could happen in less than a week.

There being no additional questions, Chair Weglinski invited staff comments.

Ms. Brunner reviewed the history of the building and the fire incident. She referenced a couple of excerpts from the property inventory form. One statement read "The Occhipinti Block occupies an important corner lot and effectively defines the southern limit of commercial development. It is an excellent representation of an early 20th century business block."

Character-defining features noted on the form include: the orientation of the building toward Main Street; horizontal design elements, especially expressed in bands of vertically laid brick; cast stone trim; the size and spacing of window openings; the outer storefronts, which retain a high degree of historic fabric; and the southern storefront that wraps around the corner. Due to the location of the building on the lot, its scale and massing, pedestrian orientation, and high level of integrity, this property is ranked as a "Contributing Resource." Ms. Brunner then explained the relevant standards of HDC regulations listed in Section 21.7.1 of the Land Development Code. The section states that in making a determination whether or not to grant a Certificate of Appropriateness for the demolition of a structure categorized as a Primary or a Contributing Resource, the HDC must find by a simple majority vote that one of the criteria #1-3 listed in the section have been met; or, the HDC must find by a two-thirds vote that there are extraordinary circumstances that warrant demolition. The criteria are as follows:

1. The applicant can demonstrate that retaining the resource would constitute economic hardship due to unavoidable quantifiable and verifiable expenditures or a fiscal loss that would ensue should the building not be demolished; or
2. The building or structure has been determined structurally unsound, based upon a written technical report prepared by an architect or professional engineer licensed in the State of New Hampshire that clearly demonstrates that the building or structure presents a risk to public health, safety and welfare; or
3. Demolition is limited to a secondary building or a free-standing structure on the same property that has not been cited on the historic resource inventory form as a significant resource or character-defining feature; or
4. The Historic District Commission, by a two-thirds vote, determines that demolition is warranted due to extraordinary circumstances."

Ms. Brunner went on to state that the applicant submitted a letter stamped by Stephen C. Tarbox, PE dated January 10, 2022, which concludes that the building sustained significant structural damage to approximately 75% of the combined first floor, second floor, and roof areas. Although the exterior brick masonry walls did not sustain any direct fire damage, their structural integrity has been compromised due to the loss of lateral support provided by the roof framing system. This letter and accompanying photos are included as attachments to the staff report.

Chair Weglinski invited the public to come forward.

Catherine Harper of 279 Marlboro Street in Keene, NH stated she was one of the original founding members of the Heritage Commission and their charge was to establish a historic district downtown. She mentioned how lucky they were to have a beautiful downtown with so much preserved history and stated she has an emotional attachment to the historic district. Ms. Harper went on to state that she is grateful someone from town bought the property and emphasized that when you take a building down you also impact all of the memories and stories that come with it, mentioning some of her own personal memories. She brought up the Keene Comprehensive Master Plan, which she played a part in creating, and reminisced on how people came together and voiced what was important to them and pointed out that architecture and preserving Keene's history of architecture were a significant part of that. She mentioned a few statements from the Master Plan, including that preservation of historical resources plays a role in achieving community sustainability. She concluded by requesting that the commission get a second opinion by another structural engineer and further explore costs to save and renovate the building. She stated her aim as a member of the community is to speak for some historic preservation and thanked the commission for what they do.

Chair Weglinski closed the public hearing and began HDC deliberations. He stated, in reviewing the criteria, what hadn't been made clear is the demonstration of economic hardship. He added that it's an interesting thing to consider because the building is unsafe unless temporarily shored up, and if they ask for more information it could potentially leave an unsafe building up for however long it takes to come to some agreement.

Mr. Fleming suggested they listen to the NHMA presentation for some possible guidance on their roles and responsibilities before continuing discussion. He added that he would be willing to allow shoring up of 3 walls and removal of a back wall but stated once they grant permission for demolition it ends the commission's involvement all together based on the new City rules. He expressed concern over this and wanted to make sure they aren't relinquishing their responsibility as the HDC. Ms. Brunner stated the presenter will not comment on specific projects but rather the general roles and responsibilities of the HDC.

Mr. Rogers reviewed that there are historic district rules and regulations and one of them specifically speaks to demolition with certain criteria that the applicant has to meet. He went on to state that the applicant provided documentation to meet criteria #2 and hinted at #1 without documentation as of now, which he suggested may not be necessary since they already meet criteria #2. He encouraged the commission to look at whether or not the applicant has met the criteria.

Mr. Porschitz stated that according to the information they have reviewed, they have no means to decline the application for demolition. He went on to state that the engineer deemed it to be structurally unsound and as soon as that happened it seems that there was no longer anything the commission could do to stand against that, even if they would prefer to save the building. Chair Weglinski recalled that an applicant can meet all of the criteria but it is still up to the HDC to grant demolition. Ms. Brunner commented that if the HDC has found that one of the criteria has been met then they do need to follow their own rules and grant permission for demolition. She added that if they do decide to ask the applicant for more information the City would ask the applicant to shore up the building.

Mr. Fleming stated he doesn't feel the written technical report clearly demonstrates that the building presents a risk to public health, safety or welfare. He expressed that the historic district has some judgement to say they want to preserve the front or corner of the building until they can see what will be built there and have some say in reviewing those plans. He reiterated that if they grant permission for demolition, they then have to trust the Planning Board to do their job.

Ms. Brunner stated if they decide to continue the public hearing they need to be clear about what additional information they would like the applicant to bring forward so they can be prepared.

Mr. Fleming brought up asking the applicant to preserve one corner of the façade and granting permission to demolish the rest of the building. He stated this would keep the building an existing historic structure and allow the commission to have some say in terms of what replaces it. Ms. Brunner stated the commission will have to condition their approval of the demolition and back it up with their standards to explain why they are making that choice. She recognized their difficult decision and cautioned them because that would mean they are allowing the building to stand for another month when it poses an immediate public safety risk. Mr. Fleming stated he would be willing to preserve that southern storefront that wraps around the building, noting it was earlier referenced as one of the character defining features. He explained that he feels strongly that the HDC isn't doing their job to preserve the historic fabric of the City and the historic district if they allow demolition. He recognized that the situation is taking place because of the changes made by the City with regards to HDC purview when it comes to new construction within the historic district, and expressed frustration.

Mr. Temple disagreed, stating that this is not a litmus test for the HDC's scope and authority, but rather a decision on whether or not an unsafe building should remain standing or be demolished.

Chair Weglinski expressed that some of the members may be struggling with the decision because they are trying to preserve the historical fabric of the neighborhood and this building is a very visible and important part of the Main Street and historic district, which really should continue to be under the HDC's review. He asked, if they agree on demolition, if there is a way for them to add a stipulation that the new design has to come back for review and approval through the HDC. Ms. Brunner stated as of now the commission adopted the regulations that state new construction is not under their purview and noted that they could weigh in as members of the public at the public hearing before the Planning Board. She continued to state that there are form based zoning standards in place now, which regulates the placement of the building on

the lot, the scale and massing, and requires a certain amount of fenestration. She noted that the standards replicate to some extent what the HDC's standards previously were for new construction and are a bit more stringent because it's codified in zoning.

Chair Weglinski asked if the HDC could amend the standards. Ms. Brunner stated they would have to do that through a public hearing process, which would need to take place in the future.

Councilor Workman expressed understanding for the predicament they are in as a commission, noting that if they are giving up some control as the HDC they will have to put some blind faith in other boards and the owner, Mr. Pappas. She went on to state that Mr. Pappas seems to have Keene and Main Street's best interest in mind and would like to have faith that he will accommodate some of their wishes moving forward. She hoped that if it is possible to save some of the brick during the demolition process that that would be done and mentioned possibly using the old bricks for a walkway or something similar. She also suggested, if demolition is approved, that they could have a green space of some sort in the space while waiting for construction. She ended by saying a burnt building on Main Street is both unsafe and an eye sore and people will likely find a way to use it as shelter the longer it remains standing.

Mr. Temple agreed and noted that he does not take the HDC's role lightly but agrees that they need to trust the other boards and the owner. He added that character is an indefinable quality and doesn't always mean preserving the structure. They can look at this like an opportunity but it will require trust.

Mr. Porschitz agreed and commented that Mr. Pappas has shown with his other building that he follows through with HDC wishes and he would trust him with the responsibility; however, the predicament maintains that once they approve demolition of the building the owner could sell it tomorrow and the HDC won't have any control over that or know if they can trust the new owner. He also recognized that the property needs to be safe and to deem structural soundness he feels they need to examine further. He reiterated that he trusts Mr. Pappas but it's hard to form an opinion in this situation.

Chair Weglinski re-opened the public hearing and asked Mr. Pappas if he had any ideas or comments.

Mr. Pappas stated the City of Keene hired the engineer that completed the report so the views are not skewed. He added that going back in with a new engineer will take months and the building condition will only worsen because there is no roof. Additionally, the original engineer was able to use the aerial bucket truck because it was present at the time but walking through the building now is a liability risk. Mr. Pappas reiterated that he is from Keene and his family has been a part of Keene and the property for well over 80 years. He understands the commission's hesitation and stated he is only present because the building was deemed unsafe by an engineer hired by the City. He went on to state that he sees this as a unique opportunity to do something downtown that can't be done anymore. He assured the commission that he intends to put up another brick building that looks like Keene and the downtown area and improve on the aesthetics.

Chair Weglinski asked how quickly they could temporarily shore up the building if they were to have a continuation of the hearing. Mr. Pappas stated a structural engineer would have to design a system and put a price on it and that process would likely take at least 2 months.

There being no further questions for the applicant and no public comments, Chair Weglinski closed the public hearing. He stated that the historical aspect is very important but if anyone were to get hurt he does not want to be responsible for that and thus is inclined, reluctantly, to make the motion as it stands. Mr. Fleming expressed that he feels the City has put them in a tough position and even if they were to delay the demolition he suspects the City would go forth with it anyway. Ms. Brunner stated the building official doesn't have authority to make the decision until the HDC reviews, unless the building poses an immediate health risk, in which case the City could issue an emergency permit.

Chair Weglinski made a motion to approve COA-2017-07, Modification #1 for the demolition of the Occhipinti Block building located at 147 Main Street. Mr. Temple seconded the motion. All in favor except for Mr. Fleming who abstained. The motion passed.

Mr. Temple left the meeting at 5:48pm.

5) NHMA Presentation - Steve Buckley, Legal Counsel for the New Hampshire Municipal Association (NHMA), will provide a virtual presentation titled “Historic District Commission role and responsibilities.” This presentation is offered as part of the NHMA on-demand training series.

Mr. Buckley presented on the HDC's roles and responsibilities beginning with the Right-To-Know law and how it relates to the business of being on a public body. He mentioned that even when there is a meeting taking place without agenda items, or even a work session, those are still a public meeting which require public notices, minutes, etc. Hearings have additional requirements. He went on to explain that minutes are to be made available upon request within 5 business days of the meeting and covered what those minutes should include. He noted that it is a better practice to post meeting minutes on the City website but they are not required to do so until the minutes are approved. With regards to minutes, he also noted that the requirements are rather broad and should include members present, summary of subject matter and decisions reached, and persons making and seconding motions; however, as a land use board they want to have robust and detailed minutes so they can have evidence in the record that supports their decisions as the HDC.

Mr. Buckley next reviewed nonpublic sessions which he stated have to be for a specific reason and must go in the order of beginning in public, voting to enter nonpublic, conducting the session, return to public session, and vote on sealing minutes if appropriate. He noted that the only common reason for them to be in nonpublic session would be for either consultation with legal counsel, which is considered a non-meeting, or for consideration of legal advice.

Mr. Buckley reminded them that it's important to avoid communication outside of a meeting, including sending emails to a quorum of fellow board members. He encouraged them to use the blind CC distribution method and cautioned against hitting reply all.

Mr. Buckley next went over conflicts of interest and disqualification. He highlighted that they act like a judge because their job is to receive evidence, hear parties on two sides of a question, weigh the evidence, apply legal standards, and make a decision. He explained that if you have direct personal interest you are going to be required to recuse yourself. Mr. Buckley gave the example of having a business or personal relationship with an applicant, stating that would be a circumstance which would require you to recuse yourself. He pointed out another important aspect of the statute which states that “reasons for disqualification do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the member’s official duties.” He explained that they want involved members of the community to be on land use boards to help inform decision making.

Mr. Buckley next reviewed the juror standard and the questions you can expect to be asked. He noted that it's important to make sure you have not committed an act of pre-judgement. Mr. Buckley then went over specific circumstances that would justify or require a judicial body member to recuse themselves, which included abutters, pre-judgement or previously having shared your point of view on the matter, financial interest in the outcome, employment, family relations, and business relationship. With regards to family relations he stated if your spouse is an advocate on a particular side, it does not mean you have to recuse yourself. Mr. Buckley stated in the case of a conflict other things you can do aside from recuse yourself are disclosure or an advisory vote, but when in doubt he encouraged recusal.

HDC fundamentals were covered next starting with RSA 674:45 and HDC purposes and then moving on to RSA 674:46 and the HDC's specific authority. Mr. Buckley reminded everyone that if they are going to adopt a regulation under RSA 675:6, they should be sure that once the regulation is adopted, an adoption certificate is prepared by staff, signed by the board members in favor and delivered to the City Clerk. Until those steps have taken place a standard cannot go into effect.

Mr. Buckley stated RSA 674:48 Interpretation is very important because it makes it clear that the idea of a HDC is not intended to prevent ordinary maintenance or repair of any structure in the historic district. He clarified that no one needs to have a permit to carry out ordinary maintenance or repair. Additionally, there's nothing that prevents the construction, alteration, repair, moving or demolition of a structure under a permit issued by the building inspector prior to the establishment of any historic district.

Mr. Buckley reiterated that the HDC is a Land Use Board which is an important concept because under the zoning and planning statutes certain mandatory operations are attached. He further explained that the HDC is made up of 3 to 7 members as decided by City Council. One member may be on the planning board and one member may be on the select board, or City Council, and 5 alternates may be appointed. When appointing, the appointing authority, which would be City Council, may take into account an appointee's interest in historic preservation.

Next, Mr. Buckley reviewed Rules of Procedure for Land Use Boards, which will tell how the board conducts meetings. He mentioned that these should include when and how an alternate may participate in meetings. Other obligations covered were RSA 676:3 and the issuance of a

final written decision, which shall be copied and made available to the applicant. If not approved, the board shall provide the applicant with written reasons for the disapproval. If approved, the board shall include a detailed description of all necessary conditions.

RSA 676:8 “Issuing Building Permit Approvals” was covered next. Mr. Buckley summarized that the HDC’s job is to review the applications and then assess the impacts. With this they can request reports from different parties and seek advice from groups and ultimately file with the building inspector.

Chair Weglinski asked if they want the Planning Board to include the HDC in the review process of a new building, do they have the right to do that with the understanding that they would not have a right to delay or vote on anything. Mr. Buckley stated, in his ZBA, staff send applications to the Planning Board, Fire Chief, Police Chief, building inspector and town manager for review and feedback. He suggested that the HDC could solicit that kind of information in time for their public hearing. With regards to new construction and the fact that the HDC’s ordinance does not allow them to have influence on new construction, he stated it might be difficult to incentivize the Planning Board and attach conditions to how the application is implemented. Chair Weglinski commented that they could amend the existing guidelines so that they can make stipulations moving forward if they go through the correct process and stated they should keep that in mind. Mr. Fleming added that this would be a change to the zoning ordinance and Mr. Buckley agreed which would mean it would go to City Council. He added that they have the ability to adopt regulations but they have to be consistent with the Zoning Ordinance. Ms. Brunner stated they could propose, in the instance of demolition of a contributing or primary resource, that the HDC does have a say in the process, which would have to go through City Council.

Mr. Buckley next reviewed that the HDC has 45 days after the filing of the application to file a certificate of approval or notice of disapproval, and failure to file within the specified time will constitute approval by the commission. He added that no building permit can be issued until a certificate of approval has been issued. In the case of disapproval, that is binding upon the building inspector, so the HDC is an important waypoint. He encouraged the HDC to work with the applicant if they need more time and to get that in writing.

Rehearing and Appeal of HDC Decision 677:17 was briefly covered and then Mr. Buckley reviewed an important court case. The case was Hanrahan v. Portsmouth and Mr. Buckley explained that when the HDC makes a decision it needs to be a reasoned decision and the statute imposes a duty on you to make a group assessment of information that is not just based on the personal opinion of one or more of the members.

Mr. Fleming asked if Mr. Buckley was aware of any other municipalities that have a HDC that has no authority over new construction in the historic district. Mr. Buckley could not recall an instance where that was the case, although he has advised the Somersworth HDC the most and stated he does not know enough about HDC regulations to answer the question. He mentioned that the Office of Planning and Development has an inventory of all zoning ordinances

throughout the state, including HDC regulations. They may be able to extract from that the communities that have a similar regulation on limitation of new construction by HDC.

Mr. Buckley concluded his presentation by thanking the commission and emphasizing that he is available through the legal advisory service to provide answers to questions by telephone or email. Ms. Brunner reminded the commission that they also have their own City Attorney available for questions.

6) Staff Updates

- a. **List of 2021 Minor Project Approvals as of December 31, 2021**
- b. **Update – Community Kitchen Solar PV Array Project (COA-2014-07, Modification #2)**

Ms. Brunner stated this is a project that the HDC originally approved a couple of years ago and it came back for a modification to install equipment on the front façade of the building, which is not generally allowed. She updated them that the equipment has been installed but it has not been painted to match the building yet; however, the applicant has provided a solid reason for delay and it will be taking place in the spring.

7) New Business

Chair Weglinski stated they will add to next meeting's agenda a discussion about the zoning amendment and obtaining the opportunity to review new construction within the historic district. He added that it's worth having a discussion given the challenges they are currently experiencing and suggested they also discuss why the HDC process was changed in the first place. He recognized the difficulty of evaluating a demolition without evaluating what will be replacing it. Ms. Brunner stated the topic would be appropriate to discuss at the next meeting.

Mr. Fleming added that it's good they all trust Mr. Pappas but they can't trust everyone so it puts them in a bad position. Chair Weglinski added that the historic district is vast but when the building in question is right on the corner of Main Street that makes things a little different than a building that is further out.

Mr. Rogers stated he understands having an applicant bring forward drawings for a replacement building but stated, in this situation, it's very unlikely due to the fact that the building is unsafe and the damage happened so quickly. It's a unique situation and different than someone simply wanting to tear a building down.

8) Upcoming Dates of Interest

- a. **Next HDC Meeting: March 16, 2022**

Ms. Brunner stated this will included the continued public hearing for T-Mobile.

- b. **HDC Site Visit: March 16, 2022 (To be confirmed)**

9) Adjournment

There being no further business, Chair Weglinski adjourned the meeting at 7:20 PM.

Respectfully submitted by,
Nicole Cullinane, Minute Taker

Reviewed and edited by,
Mari Brunner, Senior Planner