

City of Keene
New Hampshire

PLANNING BOARD
MEETING MINUTES

Monday, August 26, 2024

6:30 PM

**Council Chambers,
City Hall**

Members Present:

Harold Farrington, Chair
Councilor Michael Remy
Armando Rangel
Ryan Clancy
Kenneth Kost
Randyn Markelon, Alternate (Voting)
Stephon Mehu, Alternate (Voting)

Staff Present:

Mari Brunner, Senior Planner
Evan Clements, Planner
Jesse Rounds, Community Development
Director

Members Not Present:

Roberta Mastrogiovanni, Vice Chair
Mayor Jay V. Kahn
Sarah Vezzani
Michael Hoefler, Alternate
Tammy Adams, Alternate

I) Call to Order: Roll Call

Chair Farrington called the meeting to order at 6:30 PM and a roll call was taken. The Chair invited the Alternates to participate as voting members for this meeting.

II) Minutes of Previous Meeting – July 22, 2024

Chair Farrington offered the following corrections:

Line 109 – insert the word “note”

Line 257 – missing word is “parking spaces”

Line 261 – switch the words “existing” and “the:

Line 271 – City would “be” forwarded the results of the test

Line 297 – replace expect with “accept”

A motion was made by Councilor Michael Remy to approve the July 22, 2024 meeting minutes as amended. The motion was seconded by Stephon Mehu and was unanimously approved.

III) Final Vote on Conditional Approvals

The Chair stated that as a matter of practice, the Board will now issue a final vote on all conditionally approved plans after all of the “conditions precedent” have been met. This final vote will be the final approval and will start the 30-day appeal clock. He asked whether there were any applications tonight that are ready for a final vote.

Senior Planner, Mari Brunner, stated there are two applications that are ready for a final vote, one of which was included in the memo in the Board’s agenda packet on page 26: PB-2024-06. This was a three-lot subdivision of the property at 435 Chapman Road. The conditions precedent were as follows: owner’s signature appears on both sheets of the plan set; the submittal four paper copies, two mylar copies, and a digital copy of the complete plan set; the inspection of lot monuments by the Public Works Department; the submittal of a check to cover the cost of recording fees; and the submittal of documentation demonstrating that the application has received State subdivision approval from the New Hampshire Department of Environmental Services. Ms. Brunner stated that all conditions precedent for this application have been met.

A motion was made by Councilor Michael Remy that the Planning Board issue final approval for PB-2024-06. The motion was seconded by Stephon Mehu and carried on a unanimous vote.

The next project staff addressed was PB-2024-08, which was a Cottage Court Conditional Use Permit application for the construction of a two-unit townhouse at 0 Ellis Court (TMP #535-012-000).

The precedent conditions of approval for this application were as follows: the engineer’s stamp must appear on the site grading plan; the owner’s signature must appear on the site plan and architectural plans; the submittal of five paper copies and one digital copy of the site plan and architectural plans; the submittal of an effective screening plan between the abutters to show a six foot tall fence at the south of the property and ornamental shrubs on Colony Court to create a buffer that will have no impact on drainage or flooding.

Ms. Brunner stated that in order to meet the final condition, the applicant submitted a revised plan that shows a six foot tall, solid vinyl privacy fence for that portion of the site and ornamental crab apple trees along the frontage.

A motion was made by Councilor Michael Remy that the Planning Board issue final approval for PB-2024-08. The motion was seconded by Stephan Mehu.

Mr. Kost clarified that this was the project where there was concern about invasive species and asked if the final drawings submitted were satisfactory to staff. Ms. Brunner stated the plans have not changed except that they show the location of the fence and the location where the plantings will go along the front portion of the site. She indicated the plans are available for Board review before a vote is taken. Mr. Kost stated he wanted to make sure it was reviewed.

Ms. Brunner stated it met the condition regarding the fence and the ornamental shrubs along the front. She added the condition of approval did not refer to invasive species and hence the applicant is not being held to anything with respect to invasive species removal. She noted that she wasn’t sure what their plan is in regards to invasive species. Mr. Kost stated he recalls that in reading the

minutes, the applicant noted that they would be willing to remove any invasive species. Ms. Brunner stated that unless it is outlined in the conditions, an applicant cannot be held to this request. They may have said this at the meeting; however, stating this during a meeting is not a binding commitment.

The motion made by Councilor Remy carried on a unanimous vote.

IV) Continued Public Hearing

a. PB-2024-07 – Site Plan – Dinkbee’s Redevelopment, 510 Washington St - Applicant Fieldstone Land Consultants PLLC, on behalf of owner OM 510 Washington Street LLC, proposes to demolish the existing Dinkbee’s building on the property at 510 Washington St (TMP #532-003-000), construct a new ~6,256-sf building in its place, and expand the number of vehicle fueling stations. Waivers are requested from Sections 20.2.1.b, 20.6.E, 20.7.2.C, and 20.14.3.D of the LDC related to the submittal of a drainage report, parking lot landscaping, light trespass, and parking. The parcel is 0.74 ac and is located in the Commerce District.

A. Public Hearing

Planner, Evan Clements, addressed the Board and stated that this application was first heard at the July 22nd meeting, which is when the Board initially deliberated and took public comments. The Board voted to continue the application to their next meeting August 26th. He added that the Board took action on the three waiver requests and approved the waivers related to light trespass and the creation of parking spaces in front of the building. The third waiver related to the submittal of a drainage report was denied.

The applicant has since submitted both the traffic study and drainage report. Mr. Clements stated that City Staff has had a chance to review those reports and believes that they meet the Planning Board’s standards. Staff is comfortable with the drainage design for the site as well as the improvements in regards to traffic and site circulation.

Mr. John Noonan of Fieldstone Land Consultants was the next to address the Board. Mr. Noonan stated they have submitted a drainage report, which was one of the waiver requests that the applicant had initially requested. He indicated that they had also made a minor change to the width of the stone trench shown on the plans, which will ensure that the post development runoff from the site in velocity and volume is reduced from the existing conditions.

He indicated that they also submitted a traffic report from VHB Engineering, who utilized DOT counts from June of 2023 as well as recent counts on Washington Street, in creating the report. The results of the report showed that the capacity of Washington Street would not be diminished as a result of this proposal.

Mr. Clements reviewed the proposed motion.

The Chair asked for public comment. With no comment from the public, the Chair closed the public hearing.

Councilor Remy noted that he did not feel that there would be any regional impact from this project.

B. Board Discussion and Action

A motion was made by Councilor Michael Remy that the Planning Board approve PB-2024-07 as shown on the plan identified as “510 Washington Street Gas Station Redevelopment” prepared by Fieldstone Land Consultants at a scale of 1 in. = 20 ft. dated June 14, 2024 and last revised July 8, 2024, and the architectural elevations prepared by Metropol Design at a scale of 1/4 in. = 1 ft. dated July 8, 2024 with the following conditions:

1. Prior to final approval and signature by the Planning Board Chair, the following conditions precedent shall be met:
 - a. The owner’s signature shall appear on the plan.
 - b. Submittal of security for landscaping, sedimentation and erosion control and “as built” plans in a form and amount acceptable to the City Engineer.
 - c. Submittal of five full-size paper copies and one digital copy of the final plan.

2. Subsequent to final approval and signature by the Planning Board Chair, the following conditions shall be met:
 - a. Prior to the commencement of site work, the Community Development Department shall be notified when all erosion control measures are installed and the Community Development Director, or their designee, shall inspect the erosion control measures to ensure compliance with this site plan and all City of Keene regulations.”

The motion was seconded by Randyn Markelon and was unanimously approved. The Chair commended the applicant for meeting the Board regulations with respect to this project.

V) Advice & Comment

a. Planning Board Review & Comment on Proposed Development at 270 Beaver St In accordance with RSA 674:41, subsection I.(d), prospective owner Ken Susskind seeks Planning Board review and comment regarding his request for City Council authorization for the issuance of building permit where the street giving access to the lot upon which the dwelling is proposed to be placed is a Class VI road.

Mr. Ken Susskind addressed the Board and indicated that he and his wife, Monica Marshall, live at 81 Terrace Street in Keene. He explained that they have made an offer to purchase the parcel at 270 Beaver Street. He explained that this purchase is conditioned upon receiving a building permit and a driveway permit from the City.

Ms. Susskind explained that as far as the driveway permit is concerned, he had forwarded a letter from Public Works Director explain the process that would need to be completed per Article 23.5.5

of the Land Development Code (LDC) in order for the lot to be eligible for a Street Access Permit. He stated that one of the things that has been brought to his attention is that the City may allow a property owner to get a Street Access Permit, but that the City Council would need to sign off on it.

He stated that they are also asking the City Council to suspend resolution, R-2000-28, in which the City Council resolved that no permits shall be issued for development on Class VI roads. He stated this resolution is in line with NH RSA 674-41, which prohibits the issuance of a building permit on a lot, if the street giving access is a Class VI highway, unless certain conditions are met. He noted that the conditions are very similar to the conditions that need to be met for the Street Access Permit.

Mr. Susskind provided some background on this item. He stated that he and his wife purchased the property at 81 Terrace Street, which abuts this property on Beaver Street. The City demolished the house on the Beaver St parcel a few years ago. He noted that what he is trying to draw the Board's attention to is that this property had a house on it in the relatively recent past. He stated that their plan for the property is to build a small affordable house for their daughter to live in. The plan is to construct a house that is approximately 500 square feet in size. He noted that he hoped others could emulate this type of housing. This concluded the applicant's presentation.

Councilor Remy stated he will be looking at City Staff to review Resolution, R-2000-28.

Mr. Susskind stated he has been given a deadline of October 15th to complete this process. He clarified that no decision will be made tonight. Chair Farrington stated if the Board agrees with this request, then a recommendation in favor of the proposal will be sent to forward to City Council.

Ms. Monica Marshall of 81 Terrace Street addressed the Board next and stated they have been interested in the idea of small housing in Keene, especially with the housing shortage in the area.

Staff comments were next. Ms. Brunner stated her role tonight is to review and comment on this request, keeping in mind that the reason this request is going to City Council is simply because this property has both frontage and access from a Class VI road. She added that even though the property is right next to the Class V portion of the road and even though a house used to be on this lot, it falls into a category where it requires City Council authorization for the issuance of the building permit under the RSA.

She noted that in addition to this and in accordance with the Street Access standards, it requires City Council approval before a Street Access Permit can be granted. Ms. Brunner stated that Council will be looking for a recommendation from the Planning Board as to whether or not this development makes sense in this location.

Mr. Kost asked where the Class VI portion begins. It was indicated it begins east of Oak Street.

Mr. Clancy asked where the original driveway was located and also asked staff if the applicant would have to come to the Planning Board for any approvals. Mr. Susskind stated they have to go

to City Council for both driveway permit and building permit approvals. He noted that the driveway onto the property is only about ten feet in length.

Ms. Brunner referred to a plan from 2015 and noted where the Class V portion ends and where the Class VI portion begins. The distance from the Class V portion to the lot is very short. She referred to the location where the house used to be and also pointed out the portion of Beaver Street that has never been maintained.

Mr. Clancy asked whether this site has access to City water and sewer. Mr. Susskind answered in the affirmative

A motion was made by Councilor Remy that the Planning Board recommend that City Council grant the request to authorize the issuance of building permit for development on the property located at 270 Beaver Street.

The motion was seconded by Kenneth Kost.

Mr. Clancy noted that the cement area leading up from Oak Street to Terrace Street is in disrepair and noted that he did not feel the City would be maintaining this.

Mr. Mehu asked whether the motion also includes the driveway permit. Councilor Remy stated this motion is in response NH RSA 674-41. This statute requires that the Planning Board make a recommendation to City Council about whether or not to grant approval to allow for construction of a residence to occur off of a Class VI road. He noted that the City Council will also need to suspend its rules, because the existence of Resolution R-2000-28. He explained that applicant would be required to come back with a driveway permit.

The motion made by Councilor Remy carried on a unanimous vote.

- VI) Master Plan Update (www.KeeneMasterPlan.com)**
 - a. Project Updates
 - b. Steering Committee webpage (to view agenda packets and approved minutes)

Ms. Brunner addressed the Board. She stated that the Master Plan project continues to move forward and noted that included in the agenda packet is a link to the project portal (keenemasterplan.com) as well as a link to the Steering Committee webpage. She explained that the Master Plan Steering Committee webpage is where the approved minutes and agenda packets are posted. She stated that the draft meeting minutes are not posted right away, but if anyone is interested in reviewing minutes, they can always email staff within 5 business days to obtain those minutes.

Ms. Brunner stated that the last meeting was on August 6th and it was a workshop style meeting, where the steering committee started to identify key themes and build them out. She explained that this discussion will continue at the next meeting scheduled for Tuesday, September 3rd at Heberton Hall. She noted that this would also be a workshop-style meeting. These meetings are in preparation for the October 5th Future Summit, which is the next big public engagement

opportunity. This event is going to be held on a Saturday, October 5th from 9:00 AM to 12:00 PM in Heberton Hall at the Keene Public Library. This event will mark the official transition of the Master Plan project from the visioning phase into the implantation phase.

Ms. Brunner stated that they are still doing outreach work including setting up Visioning sessions with Keene High School and Keene State College and trying to find a way to reach a younger demographic. Staff is also planning to visit Hundred Nights to talk to some of their residents.

Ms. Brunner asked the Planning Board to let staff know if they are planning to attend because they are members of a public body and this will enable staff to make sure a quorum will be present.

VII. Letter of Support for Invest NH Housing Opportunity Planning Grant Application

Ms. Brunner stated this item is coming before the Board because the Invest NH Housing Opportunity & Planning Grant program is running another round of funding. This is a funding source to help communities increase the supply of housing in their community, especially workforce or affordable housing. There are three types of planning and zoning grants for which a community can apply. The first type of grant is to help municipalities plan. The second phase of this grant would be to conduct a regulatory audit and the third phase is to use the funds to actually develop regulations that will hopefully increase housing development in the community.

Ms. Brunner stated that in the past, the City has utilized these grants for the Housing needs Analysis, Cottage Court Ordinance, and the Neighborhood Parking Project, which resulted in three different ordinances that are in draft form right now.

One of the issues that came up throughout all three of those projects was short-term rentals. Ms. Brunner stated this issue came up during the Cottage Court Ordinance where there was concern raised from the public and City Councilors. The concern staff is hearing is that there is a growing number of short-term rentals in the community and there is interest to better understand how much short-term rentals are growing and how they are impacting the community. In addition, people would like to know whether or not this is impacting the available housing supply. In particular with the Cottage Court Ordinance, concern was voiced that when the ordinance was passed and Cottage Court Developments were constructed that there would be nothing in place to stop them from becoming short-term rentals instead of housing.

Ms. Brunner stated that staff has started researching short-term rentals and in talking with New Hampshire Housing, has found that there is no community in New Hampshire that has an answer for this issue. This is new territory that needs to be charted and staff is proposing to hire a consultant to help work through the state-level regulatory framework as well as what would work here locally and what our community would like to see. The goal would be to get an understanding of how many short-term rentals there are in the City and where they're located.

Ms. Brunner stated staff would like to work with the consultant to develop regulations that are appropriate for a short-term rentals based on what the community wants to see and to mitigate their impact on the community's housing supply. Ms. Brunner stated this came about because of a

request from the Planning Board and the PLD Committee who were hearing concerns from the public and other elected officials in the City.

Councilor Remy asked if the Community Development Department has access to the Airbnb Portal, which gives access to data regarding usage. Ms. Brunner stated that Air DNA has a lot of data and because the City does not have a paid account, the information is very broad other than a map, which shows approximately where short-term rentals are located.

Mr. Kost asked whether in addition to short-term rentals such as Airbnb or VRBO, whether there are or not there are also short-term rentals that can be occupied for a few weeks for professionals like visiting nurses. Ms. Brunner stated the proposal is just to research and better understand short-term rentals in the City, but it is not being limited to just to Airbnb or VRBO. It would be defined by being a short-term stay versus permanent residency but also distinguished from a hotel or motel.

If the City Council would like to see any regulations regulating those, there is still an open discussion about what exactly would be regulated and how. She indicated that one issue that has been discussed is perhaps an administrative licensing process that can track where short-term rentals are located and make sure that they are meeting basic life-safety standards. There could also perhaps be a use definition in zoning, so that there is an actual definition the City could use to regulate where these could occur within the City. She stated that the City would like to learn the benefits as well as the perceived impact to the community.

Mr. Clancy stated that he knows of a handful of communities in New Hampshire that have passed ordinances in the last few years and some of those are being challenged in the courts. He stated there are templates available in New Hampshire as to what is working and what is not working. He stated he is a little hesitant of hiring a consultant when there is data on short-term rentals and there are a couple examples within New Hampshire of ordinances that are going through or being challenged. He felt if this grant is being applied for, he would like to see it used for some other purpose.

Chair Farrington stated what staff is referring to is data specific to Keene – when the City is ready to craft regulations, perhaps we can use information from other towns. Mr. Clancy noted there was a recent housing study and noted that he wasn't sure how much of that detailed short-term rentals. He felt that this was a great grant opportunity and it could be focused on something more productive for the community.

Ms. Markelon stated she does not disagree with what has been said, but she noted that this issue has been raised at many meetings and she felt that having this information would be really helpful.

Councilor Remy noted that the top dates last year for Airbnb were October 8th, October 14th and 15th, September 24th for the Clarence DeMar marathon, and then October 20th for Pumpkinfest.

Ms. Brunner stated she wanted to add to what Ms. Markelon stated and noted that this is where staff was coming from. Anytime something like the Cottage Court Ordinance or changes to the accessory dwelling unit (ADU) regulations were proposed, this issue has been raised as a concern.

She agreed that there are other ideas that this grant could be used for, if that is what the Board would like.

A motion was made by Councilor Remy to authorize Chair Farrington to write and submit a letter of support for the City of Keene's application to the Invest NH Housing Opportunity Planning Grant program.

The motion was seconded by Stephon Mehu.

Councilor Remy stated he did not feel this was the best use of the funds and felt it was a perceived problem, which might not be reality. He felt that although there are short-term rentals, there is a fixed demand for them. If there are enough, it will stop being a demand. He noted that the average rate for an Airbnb is \$193 per night, which is not something that is in competition with rental housing. He felt Airbnbs also bring money into the community. He stated that he is not in favor of regulating this use.

Mr. Kost asked if the Board does not support this idea, whether there was another use these funds could be utilized for. He also asked how much the grant was for. Ms. Brunner stated the deadline for the grant is September 30th and it could be used for another purpose. What staff would be looking for is a letter of support, if they feel this is a good project. Otherwise, there could be a discussion as to what might be a worthwhile project to work on. The ultimate goal of this grant is to provide affordable and workforce housing in the community. The maximum grant the City could apply for is \$100,000, but for short-term rentals, the City would likely request about \$20,000.

Ms. Markelon asked whether the previous Housing Needs Analysis looked at rentals. Ms. Brunner stated that it did and one of the suggestions of the suggested action items was to create a rental reimbursement program for short-term rentals. Ms. Markelon felt it would be worthwhile to have the data as this has been an ongoing pushback from the community. She asked whether the review can be broad without the intention of regulating it. She indicated that as a student at Antioch when visitors come down for the weekend in the fall, they have a hard time renting. She noted that Airbnb's and hotels are expensive, and agreed there is a need to explore this idea.

Community Development Director, Jesse Rounds, felt one of the benefits of going with an Invest NH Grant is to be able to understand the size of the issue. Staff can also work with the consultant to come up with a set of regulations. He stated that as Mr. Clancy indicated, there are NH towns who are having to deal with the court system because of this issue and the City would like some outside help to make this work. He added that this is also a way for staff to focus on other projects that the Joint Committee has assigned them to work on.

Mr. Kost stated that understanding the real issues and ultimately getting some development into the area will be very important. Ms. Brunner stated there is another grant staff is looking into, which is a very competitive grant because it focuses directly on housing. The Invest NH Grant helps with planning, auditing regulations, or developing regulations. It cannot be used for things like identifying where developable properties are located, land acquisition, working with developers, etc. Ms. Brunner stated staff could review the other projects related to parking minimums, zoning changes for neighborhood nodes, and private roads.

Mr. Clancy stated that in his opinion, the priorities are encouraging development and bringing more housing in. He felt that this was a great grant opportunity and noted that he would like to see the auditing and planning side of the application crafted, so that more development could be encouraged in the City.

Chair Farrington felt that the motion gives the Board flexibility to choose the project that is most valuable. Mr. Clancy stated he does not feel comfortable voting on something that could be valuable information, but is not a priority. The Chair stated the Planning Board is not the only voice, the Council would also have a say in what project they would like to use the grant for. He felt that if the Board holds it up, staff loses the opportunity to meet the deadline. Mr. Kost felt the motion makes sense as it would bring in grant funding that could be used to do something useful and not jeopardize getting the grant. Ms. Markelon stated she trusts staff's judgement. Councilor Remy felt this was not the best use of the funds. Based on the Housing Needs Assessment completed in 2021, it showed there were 50 short-term rental units, which is only 0.5% of housing in Keene. He felt that even if that number quadrupled, it was still not a problem.

The motion made by Councilor Remy carried on a unanimous vote.

VIII. Training: Site Plan Review Process

Ms. Brunner addressed the Board and began by indicating that there was a previous unanimous vote from the Board for a Site Plan Review training. She indicated that today she would be going over State RSAs; the role of the Minor Project Review Committee; the thresholds in the Board's regulations for Major and Minor Site Plan Review; a high-level review of the Major Site Plan Review process; the Board review of site plans; the Site Development Standards; an explanation of off-site improvements; and a review of Board decisions.

Ms. Brunner stated the authority for the site plan review comes from NH RSA 674:43, which states that communities that have adopted a zoning ordinance, established a Planning Board, and have adopted subdivision regulations, have the authority to develop site plan regulations in order to review and approve site plans for the development, change, or expansion of use of tracts of land for non-residential uses or multifamily dwelling units.

Under state law, this applies specifically to commercial and multifamily uses. Multifamily housing is defined as being more than two dwelling units. In addition, it is specified that the site plan review regulations can address the following items: drainage and flooding; the protection of groundwater; pollution (such as noise); fire safety; aesthetics; open space preservation; streets; character of land for development; health, safety, convenience, and prosperity of the public; and innovative land use controls.

Minor Project Review Committee: Ms. Brunner went on to say that State statute also allows the Planning Board to delegate its site plan review authority for the review of minor projects (as defined by the local municipality) to a different entity. In Keene, the Planning Board has delegated Minor Site Plan Review authority to the Minor Project Review Committee. This committee, as dictated by state statute, is composed of City Staff who have experience reviewing site plans,

including the Public Works Director or their designee, the Community Development Director or their designee, the Zoning Administrator or their designee, the Fire Chief or their designee, and a designee of the City manager.

The Minor Project Review Committee is similar to the Planning Board and has to hold a public hearing. Notice to abutters is required, which includes a 10-day published notice in the paper, sending abutter letters, and posting a notice in two public locations. Ms. Brunner noted that because projects in this category do not meet such a high threshold for review, they can be reviewed by City Staff where there is a little less pressure at the meeting. Meetings are held during the day on the third Thursdays of the month at 10:00 AM. Because this is during normal work hours, it is a lot easier for applicants who have to hire a professional. There is also a shorter timeframe for application review. The public has the opportunity to attend a public hearing or send an email or letter ahead of time with their comments and questions. The decision of the Minor Project Review Committee can always be appealed to the Planning Board.

Ms. Brunner stated that prior to the adoption of the Land Development Code, the Board's Site Plan Regulations dictated that the threshold for Major Site Plans was that any new construction of 1,000 square feet or more automatically had to go before the Planning Board, which meant that there were many projects that came before the Board that were relatively minor in nature. She noted that this was the case especially in some of the more commercial and industrial districts, where a 1,000 square foot building was relatively small. One of the changes that was made with the adoption of the Land Development Code, was that new buildings and structures between 1,000 and 5,000 square feet (sf) of gross floor area (gfa) could go to the Minor Project Review Committee and anything above this threshold would come to Planning Board. She noted that there were other thresholds added with the idea that in some areas of the City, there are massive buildings where a 10% addition would be large compared to a smaller building closer to the downtown where a 10% addition would be much smaller. This percentage has been added as a threshold.

Ms. Brunner noted that another threshold is the number of vehicle trips per day. If a new use or a new development will increase the number of vehicle trips by 100 per day or 50 during a peak hour, then that is an automatic trigger where they have to go before the Planning Board.

Another threshold is installation of impervious surfaces and land disturbance. Ms. Brunner stated that as was indicated on the presentation slides, when it came to the items on the bottom of the list, it gave a lot of discretion to the Community Development Director in terms of deciding where a project should go. The language is as follows: *"Modifications to the site or building (e.g. lighting, landscaping, façade alteration, etc.), which, at the discretion of the Community Development Director, or their designee, warrants minor site plan review."* And any, *"Change of use, which at the discretion of the Community Development Director, or their designee, warrants minor site plan review. Such determination shall be based on an evaluation of the impacts of the proposed use on both the subject parcel and the surrounding neighborhood."*

Ms. Brunner explained that when a project comes or an inquiry comes in, if it doesn't fall under any of those automatic triggers, such as 100 vehicle trips, the square footage of new construction, etc., staff verifies whether or not the proposal would have any impact on the site and surrounding areas. If determined it does not, staff will have it either go through what is called an Administrative

Planning Review just to make sure that it meets the regulations or it would be referred to the Minor Project Review committee. Ms. Brunner noted that any time an applicant requests a waiver from the regulations, it automatically pushes them up to the Planning Board for review.

Mr. Clancy asked who created this list and asked if something like a Cottage Court Conditional Use Permit (CUP) application does not need a waiver, whether such an application could be sent to the Minor Site Plan Review Committee (LDC). Ms. Brunner stated that in reference to the creation of the list, when the Land Development Code was being created, there was a steering committee that staff worked with pretty closely. They came up with an initial set of recommendations, and then it moved into the public workshop phase. This item was in that phase for approximately nine months and then went through the Joint Committee process. She added that many of these thresholds came from the original regulations.

She went on to say before the LDC, the Minor Site Plan process did not exist. Any project meeting the current thresholds for Minor Site Plan Review met the old threshold for review by the Planning Board. The adoption of the LDC allowed some of the Planning Board applications and shifted them down to the Minor Project Review Committee to try and make things a little bit easier for applicants.

With reference to the second question, Ms. Brunner stated that in New Hampshire, CUPs can only be granted by either the Planning Board, Zoning Board, or City Council. If it is decided that the Zoning Board or City Council would be the body that grants a CUP, it has to be after a review and recommendation by the Planning Board. The City of Keene has decided to have the Planning Board review CUPs. Ms. Brunner stated it is her understanding that there isn't the ability to have a CUP go to the Minor Project Review Committee. The only items that the Minor Project Review Committee can approve are site plan approvals.

Mr. Kost noted that for projects in the Downtown, the scale gets much finer and noted that a small project can have a big impact. He asked whether this is something that has been considered. Ms. Brunner stated that this is where thresholds related to additions being between 10% to 15% of the gross floor area of the existing building going through the Minor Site Plan review process and then additions greater than 15% of the gfa of the existing building needing to go to the Planning Board come into play. She noted that this is why percentage is used for those thresholds and agreed that new construction 5,000-sf in the Downtown would be pretty significant.

Chair Farrington clarified that the Historic District Commission would also weigh in on any projects in the Downtown. Ms. Brunner stated that the Historic District Commission would weigh in on any project impacted an existing building 50 years or older in age. Any new construction is exempt from that review process.

Major Site Plan Review: Ms. Brunner stated in the City of Keene, we require a pre-submission meeting with City Staff. She explained that the timeframe for that meeting is at least two weeks prior to the application submission deadline. She indicated that the purpose of these meetings is to go over plans with the applicant and staff from the various City departments. Even if the plans are only at a conceptual level, staff can review some of the key issues with the applicant that they will need to address and hopefully help them be prepared by the time they apply. The preliminary

consultation stage is required for Major Site Plan Review applications and any subdivisions involving the creation of than three lots or the creation a road. Applicants have indicated that this is a helpful meeting. She indicated that the application submission deadline is 26 business days before the Planning Board meeting. Staff requires two business days to do a completeness review of all applications and verify that all submittal items have been provided. Applications are then sent out for departmental review. Staff is given one week to complete this review. Those comments are then provided to the applicant in one document and updated materials are then submitted by the applicant to address staff comments. The day after that revision deadline, the City sends out the notice to the newspaper (this has to be sent out two days before it runs) and it has to run 12 days before the meeting. Staff also mails out abutter letters 10 days ahead of time.

If a site visit is going to be held, a site visit is scheduled the week before the meeting.

At the Planning Board meeting when the Board votes to accept an application as complete, this starts the 65-day decision clock, which Ms. Brunner stated is an important item to note. This is because in state statute, there is the 65-day decision deadline. Within that 65-day timeframe, the Planning Board has to make a decision or the project basically gets automatically approved. If the Board feels at the end of that 65 day timeframe that they do not have enough information or are not ready to make a decision, the Board can always deny the application without prejudice and then the applicant can resubmit the exact same application. Mr. Clements added that the Board can also request more time from the applicant and the applicant can waive that 65 day decision timeframe

Ms. Brunner added that once the Board accepts the application as complete, they can either open the public hearing at that same meeting, which is the general practice, or the public hearing can opened at the next meeting.

Once the public hearing process has been completed, the Board either votes to continue as long as it is within that 65 days; approve with conditions; issue final approval; or deny the application. Ms. Brunner stated that staff recommends instead of denying an application, to continue it to the next meeting to give the applicant more time to address the Board's concerns. Once the Board has issued final approval, that is when the 30 day appeal clock gets started for abutters or any other aggrieved parties to appeal the Board's decision if they so desire. Ms. Brunner stated the goal is to have an application approved in one meeting with all the preliminary review completed ahead of time. It might not always be the case with more complex projects. This is really meant to be for those larger, more complex projects, they have to go through that preliminary consultation phase.

Councilor Remy noted that 90% of the time, the conditions precedent on an application include the owner's signature on the plan as well as submitting copies of the plan. He asked if there is anything that can be done to eliminate the need to include these items as conditions precedent. He is hoping that there may be a way that an applicant can show up with copies of signed plans in hand. Ms. Brunner agreed that this can be done and noted that it has been done with some applications. When there is a risk that an application might not get approved or other conditions might need to be added and if a mylar is already signed, this is not commended; however, if it is a straightforward application, they are advised to do what the Councilor was referring to.

Best Practices: When the Board reviews a site plan, it is using its Site Development Standards to guide that process. The Board has 13 standards and the Board cannot replace any of those standards or supplant them with personal feelings about a project. The Board cannot also rely on opinions or anecdotes that have been refuted by uncontroverted expert evidence (*e.g. if someone says they feel a project is going to increase runoff onto their property, but the applicant has a study prepared and stamped by a licensed engineer that the project is going to actually reduce runoff and reduce flooding*).

The Board now has uncontroverted expert evidence on the table that says one thing, and then there's somebody's fear of what might happen. In this instance, the Board can't rely on a layperson's opinion or anecdotes if there is expert advice that says otherwise. Ms. Brunner stated that the Board has the right to ask for a third-party opinion. Ms. Brunner encouraged the Board to raise their hand and ask questions of the public or the applicant. She indicated that the Board should avoid what is referred to as *ex parte* communication, which means no discussion of the project with other Board members or the public and definitely not with the applicant or abutters.

Ms. Brunner that the Board cannot rely on a lay person's opinion, but the Board can rely on their own personal knowledge of the area. She noted that the reason members are appointed to this Board is because they are experts in the local community and have connections.

Chair Farrington stated that members should not be emailing each other with opinions about projects and stated that all discussions should take place within the confines of Council Chambers.

Ms. Brunner stated if Board members are emailing each other, they could potentially create a condition of an illegal meeting under as defined under NH RSA-91A. If Board members have a question, email staff directly and not copy anyone else.

Mr. Clancy asked if two board members wanted to work on ordinances or procedures if that is allowed outside of meeting. Ms. Brunner stated this would not be advisable.

Mr. Clancy asked if the Board wanted to change its regulations to make it be restrictive and there is an application already before the Board – could this cause an issue. Ms. Brunner stated it depends where in the process the application was; if the Board was in an informal discussion stage, but the regulations on the books are what the regulations are, then the Board would need to follow those regulations. However, if there is public notice regarding changes to the regulations, then the applicant would have to wait until that process is complete.

Public Hearing Format: After the application has been found to be complete and the Chair opens the public hearing, the applicant will make their presentation to the Board followed by staff's presentation based on the staff report. The public would then have an opportunity to comment. Once the public comment portion is closed, the Board should have adequate information to deliberate. During the public comment, the Board should not be deliberating. Board members should be obtaining all information before deliberating and their deliberation should be based on their standards.

Off Site Improvements: These are improvements that are necessitated by a development, but are located off of that private property associated with the development. Ms. Brunner explained that when a large development happens next to an intersection, for example, this may create the need for the City to upgrade that intersection, which is going to be an expense to the taxpayer as a result of this development. In this instance, the Planning Board could request that the developer do certain things so the expense does not fall on the taxpayer and include these items as conditions of approval.

Mr. Clancy referred to the Whitcomb's Mill Road project where the public raised concern, but the State was in charge of this intersection. He asked what authority the Board has in an instance such as this. Ms. Brunner stated the City cannot request changes to a State-managed intersection, but could work with the state on this. Mr. Clements stated that when he worked in Hollis and they encountered situations like this where there were sight issues on a State-managed road, the applicant reached out to the State early on in the process.

Board Decisions: As mentioned previously, the Board had 65 days to act. The Board can approve applications with no conditions and the applicant has 180 days to meet any conditions precedent to receive final approval. The conditions have to be related to the specific criteria the Board has. The Board can also deny the application, and if it does, the reason for denial has to be clearly stated. If the applicant meets the development standards and the Board still feels the application needs to be denied, then its decision has to be supported by really compelling evidence and analysis. Ms. Brunner stressed that in the case of a denial, the Board needs to make sure they are building up the reasons in the public record because denials have a very high chance of getting appealed to the Superior Court. Hence, this is one of the reasons why staff always recommends continuing an application rather than denying it. This gives staff time to confer with the city Attorney and also gives the applicant time to address the Board's concerns.

Best Practices: If questions or concerns come up during public comment or deliberation, it is a good practice to invite the applicant to respond. Once the application is closed and a suggestion is made which may require a response from the public, the Board would need to re-open the public hearing to hear from the applicant. Ms. Brunner suggested being as clear as possible about the basis of Board decisions.

Mr. Clements stated that strong, well deliberated approvals are just as important as strong, well-articulated denials. Shaky approvals put an applicant at risk for an appeal that can derail and ultimately ruin a project. He suggested that the Board read the staff report and pick one or two standards that an application meets well bring them up during the deliberative portion of the public hearing.

IX. Staff Updates

None

X. New Business

None

XI. Upcoming Dates of Interest

- Joint Committee of the Planning Board and PLD – September 9th, 6:30 PM
- Planning Board Steering Committee – September 10th, 11:00 AM
- Planning Board Site Visit – September 18th, 8:00 AM

There being no further business, Chair Farrington adjourned the meeting at 8:45 PM.

Respectfully submitted by,
Krishni Pahl, Minute Taker

Reviewed and edited by,
Megan Fortson, Planner