

City of Keene
New Hampshire

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

Tuesday, January 19, 2021

6:30 PM

Remote Meeting via Zoom

Planning Board Members Present:

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

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

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

Planning Board Members Not Present:

Tammy Adams, Alternate
Andrew Weglinski
Gail Somers

Staff Present:

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

1) Statement of Authority to Hold Remote Meeting

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

2) Call to Order & Roll Call

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

3) Continued Public Workshop Ordinances O-2020-10 & O-2020-11 – Relating to the establishment of the City of Keene Land Development Code and changes to the City's downtown zoning districts. Petitioner, City of Keene Community Development Department, proposes to update and unite the City of Keene's regulations related to land use and development, including the Zoning Regulations, into the City of Keene Land Development Code; to establish 6 new zoning districts in Keene's downtown area (Downtown Core, Downtown Growth, Downtown Limited, Downtown Edge, Downtown Transition, Downtown Institutional Campus); to remove the Gilbo Avenue Design Overlay District and the Downtown Railroad Property Redevelopment Overlay District; and, to modify the SEED Overlay District.

Ms. Kessler reminded the Committee and the public following that these ordinances are still in the public workshop phase. She reviewed the ways in which the public can follow along and provide comments.

Councilor Jones asked why minutes from last month are not being voted on. Ms. Kessler explained the minute taker has five business days to get the draft minutes complete, and because the last meeting was on January 11th staff has not had the opportunity to review those set of minutes yet. She noted they will be voted on at the February meeting.

a. Review of Articles 25 & 28 of the proposed City of Keene Land Development Code

Ms. Kessler noted that she will be reviewing the remaining two chapters of the proposed Land Development Code. This presentation will conclude staff's review of the proposed Code chapters.

Article 25 – Application Procedures

Ms. Kessler reviewed Article 25, which is one of the longest chapter in the land development code. It combines the procedures for application submission and review for all of the various development applications/permits included in the proposed Code into one section. This chapter includes quick reference tables to display the processes for approval, and the decision making entities for each application type. There is also a table that shows the different types of notice required and the timeframes for notice for the different applications. The application types/processes included in this section include: Amendments to the Zoning Text or Zoning Map; Amendments to the Land Development Code Amendments; Zoning Variance; Special Exception; Expansion of a Nonconforming Uses or Structure; Equitable Waiver of Zoning Dimensional Requirements; Zoning Administrator Written Interpretation; Planning Board Advice and Comment; Site Plan Review; Administrative Planning Review; Conditional Use Permits; Historic District Certificate of Appropriateness; Street Access Permit (currently referred to as Driveway Permits); Floodplain Development Permits; Sign Permits and Earth Excavation Permits.

Ms. Kessler drew the Committee's attention to the application processes that are newly proposed or changes that are proposed to existing processes.

Ms. Kessler referred to the Land Development Code Amendment Process – this is a newly proposed process. Staff propose that amendments to the Land Development Code would follow a similar process to amendments to the Zoning Ordinance. The only difference would that any changes proposed to Articles 19 and 20 would need to have a public hearing before the Planning Board, and any changes proposed to Article 21 would require a public hearing before the Historic District Commission.

The next change being proposed is to the criteria for the Zoning Board of Adjustment to use in deciding on applications for a Zoning Variance. She noted the current criteria depart slightly from the language in the NH statutes. Staff have proposed that the variance criteria mirror those that are outlined in state statute.

Ms. Kessler noted that staff have proposed changes to the Special Exception criteria. She explained that staff felt the current criteria should be more specific and provide more examples

for how the Board might place conditions on Special Exceptions. The current Special Exception criteria are as follows:

- 1. The proposed use is similar to one or more of the uses already authorized in that district and is in an appropriate location for such a use.*
- 2. Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.*
- 3. There will be no nuisance or serious hazard to vehicles or pedestrians.*
- 4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.*

The proposed Special Exception criteria reads as follows:

- 1. The nature of the proposed application is consistent with the spirit and intent of the Zoning Regulations, this Land Development Code and the City's Comprehensive Master Plan, and complies with all the applicable standards in this Land Development Code for the particular use.*
- 2. The proposed use will be established, maintained and operated so as not to endanger the public health, safety, or welfare.*
- 3. The proposed use will be established, maintained, and operated so as to be harmonious with the surrounding area and will not impede the development, use, and enjoyment of adjacent property.*
- 4. The proposed use will be of a character that does not produce noise, odors, glare, and/or vibration that adversely affects the surrounding area.*
- 5. The proposed use will not place an excessive burden on public improvements, facilities, services, or utilities.*
- 6. The proposed use will not result in the destruction, loss, or damage of any feature determined to be of significant natural, scenic, or historic importance.*
- 7. The proposed use will not create a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity of the use.*

The proposed language related to conditions placed on Special Exceptions reads as follows:

“In the event that the Zoning Board of Adjustment decides to approve a special exception, they may choose to impose conditions and restrictions as are directly related to and incidental to the proposed special exception. Such conditions may address limits on location, scale, intensity, design, lighting, signs, hours of operations, provisions for recreation and open space, buffers and screening, and other performance standards...”

Ms. Kessler review another change proposed in Article 25, which is to establish a more formal process for decisions issued by the Zoning Administrator. There is nothing outlined in the city code at this time for Zoning Administrator written interpretations of the zoning regulations. She explained that the proposed code requires a person seeking a written interpretation of the zoning regulations to submit a request in writing. Within 21 business days, the Zoning Administrator shall render a written opinion or interpretation and a copy of the interpretation shall be retained on file. This interpretation can be appealed to the Zoning Board of Adjustment.

Ms. Kessler noted that the application processes for Conditional Use Permits (CUP) are integrated into one section. The section references the specific submission requirements and approval standards for the different types of conditional use permits including, Congregate Living and Social Services, Solar Energy Systems, Surface Water Protection Ordinance, Hillside Protection, and Telecommunications. The Planning Board would be responsible for evaluate

conditional use permit applications for compliance with all applicable design standards and CUP review criteria. These applications would be subject to the same process as a major site plan review. CUP applications can be reviewed concurrently with site plan applications and there is a requirement that there will be onsite posting of a public hearing.

Article 28 – Definitions

Ms. Kessler moved on to review the Definitions chapter of the proposed code. She noted that when staff began this project, they reviewed all of the terms that are defined in the many different regulations brought into the code. There were approximately 810 different definitions. Among them, some terms were defined differently in different regulations, and some terms were defined but never appeared in the text of the regulations. In some instances, a term was only referenced once. With this proposed Code, staff removed definitions for terms that were not mentioned, selected the most appropriate definition for terms that had multiple definitions, and included definitions in the text of the regulations for terms that were only referenced once and may be specific to a certain chapter. In addition, staff had to create definitions for new terms or terms that were missing definitions. She reminded the Committee that the permitted uses are defined in Article 8, and the terms related to measurements are defined in Article 1.

Ms. Kessler went over the definitions that staff is proposing to amend.

The term family is currently defined as *one or more persons occupying a dwelling unit and living as a single housekeeping unit, provided that a group of five or more persons who are not within the second degree of kinship shall not be deemed to constitute a family*. Staff feels this definition can be confusing and what staff is proposing is more in line with how other cities define family.

The proposed definition of family is “*Family shall mean one of the following:*

- 1) two or more natural persons related by blood, marriage, civil union, adoption, or foster care, living together as a single housekeeping unit with or without customary household helpers in a dwelling unit; or*
 - 2) a group of four or fewer natural persons, who are not related by blood, marriage, civil union, adoption, or foster care, living together as a single housekeeping unit in a dwelling unit.*
- This term shall not preclude one natural person from being the sole occupant of any dwelling unit.*

For item 1 *with or without customary household helpers* was added. This would allow for a family to include persons that are unrelated that might live with and support the family.

Chair Bosley questioned if a family of five have an adult child’s boyfriend living with them who is not related by marriage and is not a household helper - would that constitute as not being a family. Ms. Kessler referred this question to Zoning Administrator John Rogers. Mr. Rogers agreed under the current definition, they will not be considered as family. Chair Bosley referred to another scenario – a family of four living in a four bedroom apartment but rent out one of the rooms to a random person (so now four are related one is not) – under the current situation, will this be considered to be illegal. Mr. Rogers agreed they would not qualify as family (*under both the current and proposed definition of family*).

Ms. Kessler stated the city is not regularly enforcing who is and is not family member. This definition relates to who and how many unrelated persons are permitted to live in a dwelling

unit. The use of family in zoning is traditionally how density is controlled for in various zoning districts. Chair Bosley stated it has always been confusing to her how family is defined; when you have legitimate family living together and how you identify an additional person living with them and how that can be regulated under the regulations. She added she did not feel it is the intent to prevent a daughter's boyfriend from living with the family.

Mr. Kopczynski stated the city is not knocking on doors to find out who is living in properties; what is being pursued is categorizations for building code, fire code and there needs to be some type of definition – what is being proposed is a definition that is universally accepted. He added it is not the intention of the city to throw a boyfriend out of the house because they just found out about it – it is for the purpose of having a definite category. The Chair felt if this item gets mis-used it will need to be revisited at some point.

Ms. Kessler address the definition for Open Space next. Currently, the definition is specific to the context of conservation residential development (CRD). Because Open Space is being used throughout the code, a new definition is being proposed. The proposed new definition reads as follows: *“Unless otherwise defined in this LDC, that portion of land, either landscaped or left unimproved, which is not intensively developed, and may be used to meet passive recreation or spatial needs, and/or to protect water, air, or plant resources.”*

Ms. Kessler addressed the definition for Collocation next, which is specific to Article 13 – Telecommunication Overlay District. The current definition is outdated and the new definition being proposed is more in consistent with federal regulations. The proposed new definition reads as follows: *“For the purposes of Article 13 "Telecommunications Overlay District," collocation shall mean mounting or installing an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure, as defined by the FCC in 47 C.F.R. § 1.6102(g) (as may be amended or superseded). Collocation does not include a "substantial modification.”*

Mr. Lamb noted the reason for the amendment of language is because of changes to RSA 12-k.

The definition for Public Right of Way is currently only defined once in the city code under the Historic District Regulations. The proposed new definition reads as follows: *“Means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes, or other public access.”*

Ms. Kessler then noted the terms for which definitions are added in the proposed LDC. These include the following terms:

- *Activation*
- *Addition (to an existing structure)*
- *Alley*
- *Glazing*
- *Government building*
- *Development*
- *Natural person*
- *Personal care services*
- *Pervious*
- *Primary frontage*

- *Secondary frontage*
- *Parking lot building frontage*
- *Public infrastructure*
- *Service connection*
- *Solar energy system*
- *Solar footprint*
- *Solar land coverage*
- *Street access*
- *Tenancy frontage*
- *Vehicle trip*
- *Visible light transmittance*
- *Arterial Roadway or Arterial Street*
- *Collector Roadway*
- *Downtown Roadway*
- *Local Roadway*

Ms. Russell Slack asked what an example would be for *Addition (to an existing structure)*. Ms. Kessler stated this is when someone adds to a structure. Mr. Lamb asked whether most of these definitions relate to the form based concept. Ms. Kessler stated specifically Activation, Glazing, Visible Light Transmittance and Street Access refer to downtown form based zoning

b. Continued Discussion on Congregate Living / Social Service Uses

Ms. Kessler addressed Congregate Living & Social Service License next. Last week there was a question raised about the licensing authority and appeal process. The existing Chapter 46 of the city code outlines the appeal process for licenses. The city council is the licensing authority for community events and street fairs and lodging house. With the proposed Code, staff is proposing that congregate living and social service uses obtain a license from the City Council. This license would replace the current lodginghouse license. The issue that staff have identified with the current appeal process, is that the appeal entity for all licenses, including those issued by City Council is the City Manager, City Clerk and Police Chief. The issue with this is the City Manager and City Clerk are charter officers who are hired and evaluated by the City Council, which presents a conflict. To address this conflict and to be able to continue to have public review, staff's suggestion is to establish a licensing board that would serve as the licensing authority for the proposed Congregate Living and Social Services licenses and other licenses currently issued by City Council, and the appeal would be to City Council. Ms. Kessler asked for the City Attorney's comments - Attorney Mullins added it would be up to the Joint Committee and Council as to how they wish to proceed on this issue and added for this type of licensing there needs to be an effective appeal process and that is what is being presented to the Joint Committee. Chair Bosley stated as a member of the PLD Committee she was glad the Council could continue to be involved and this creates that opportunity.

Councilor Workman asked whether this licensing board would have staff and council representation. Attorney Mullins stated this is something that would still need to be discussed with City Council but felt the overall approach would be to have representation from entities that have experience with specific license areas and to have people with business licensing expertise. Councilor Workman felt to avoid conflict of interest, this board should consist of members in the community with a level of expertise and not involve the City Council.

Ms. Kessler stated that staff reviewed options for license application review criteria for the licensing authority at the January 11 meeting. At this meeting, the Committee suggested that there should be one set of license review criteria for all applications, and that uses requiring a conditional use permit would also be required to obtain a congregate living and social services licenses before they can initially operate. She reviewed the license criteria, which had been reviewed at the last meeting. These criteria include:

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

Councilor Greenwald asked what defines *police action* – he stated what he is looking for is a clear definition of what would cause the termination of a license. Ms. Kessler stated that she will be reviewing proposed language for cause for revocation of a license.

Councilor Jones stated in the past there were issues with complaints or police actions needing to be identified at a particular address, even though the police may have been responding to an incident happening on the street a few yards from the address. He asked whether this could somehow be incorporated. Councilor Jones clarified the appointment of the proposed licensing board would be outside the ordinances being discussed. Ms. Kessler stated there is language in ordinance 2020-10 which talks about changes to Chapter 46. Chair Bosley asked if the topic of the congregate living and social service license and changes to the appeal entity in Chapter 46 starts getting confusing whether it can be separated out. Ms. Kessler stated it is possible but it would need to be voted on by City Council either before or simultaneously with the proposed Land Development Code at they cross reference each other. Mr. Lamb added it needs to be stressed these items need to work together – it is important they work in parallel.

Ms. Kessler indicated there was discussion last month about giving a licensee time to correct a violation so they can continue to operate with limitations. She indicated staff needs more time to come up with this language and propose terms for suspension or probation. She noted staff have proposed terms for license revocation. These would include:

- a) *Fraud, misrepresentation, or false statement contained in the license application.*
- b) *Fraud, misrepresentation, or false statement made in the course of carrying on the use for which the license is issued.*
- c) *Substantial violations of the terms of Chapter 46.*
- d) *Any substantial violation of applicable municipal building, zoning, health, police and fire rules, regulations, and ordinances, and applicable statutes, rules and regulations of the state.*
- e) *Any violation of a restriction or condition placed on the license.*
- f) *The licensee is determined to be routinely conducting the use in such a manner as to be a substantial or unreasonable nuisance to the public health, safety, or welfare.*
- g) *Refusal to permit an inspection or any interference with a duly authorized City enforcement officer while in the performance of their duties in making such inspections required by Chapter 46.*

Councilor Greenwald felt this language was too broad and needed some specific criteria. It should be for all entities that receive a license not just for congregate living and social service uses. For instance, if the police are called certain number of times it will be a warning, after which time the license will be revoked. He stressed as a prior city attorney had stated, once a license is issued it is difficult to revoke. Mr. Lamb stated staff did look at the options around this question, particularly a threshold that could be identified, but what staff found was that it can be difficult to select a particular number or type of violation. For instance the number of police calls at a location could be from a disgruntled neighbor. There has to be some sort of evaluation of the police action or call, and this requires some discretion. Trying to apply a universal standard would be difficult. As a result, staff is suggesting to be less specific to allow for some discretion. Chair Bosley stated that this should not be at the discretion of the committee [the licensing authority], it should be up to the Police Chief to inform the committee as to whether the calls were founded or not.

Mayor Hansel stated he had addressed this at the last meeting; it is not about whether the Police Department feels they were nuisance calls or not. He does not want people not calling the police or fire department because they are afraid of losing their license. He stated he agrees with staff that these criteria should be broad.

Ms. Lavigne Bernier stated she understands both sides of this discussion. She indicated she agrees with the Mayor and Mr. Lamb and basing terms for suspension or probation on the number of police or fire calls is worrisome to her.

Councilor Johnsen asked whether the licensing board would not have representation from police, fire, council so that they could provide input.

Chair Bosley stated she would like the neighbors to understand there is protection and the licensee is aware of what is expected so they can address the violation issues.

Mr. Kopczynski stated staff should be able to come up with criteria based on the concerns raised. He stated he would however, hesitate to put any of the enforcement groups on this committee because there could be an instance that this staff person is having to bring something to the committee and also having to act on a license.

Ms. Russell Slack stated she agrees with what Mr. Kopczynski stated with reference to not having City enforcement staff on this committee, but would like to see public representation on this committee. She stated she is not completely sold on this committee being appointed by the Council but felt the staff has been given sufficient direction to bring edits forward for the next meeting.

Mayor Hansel felt the list of proposed causes gives all parties a guidance. He felt the board will have the opportunity to look at things objectively, hear both sides and come to a decision.

Mr. Lamb felt the licensing board should not be tied down by criteria - in some cases a probationary period might work but not in other cases – judgment is an important component.

Ms. Kessler addressed the license schedule and noted one suggestion was for group homes to have its own month due to the number of licenses that might come before the committee. Also,

that fraternity and sorority would not have their renewals happen in the summer given they are likely not present on campus - staff's suggestion is for this use to have their licenses renewed on October 1.

Ms. Kessler drew attention to an email that staff received a few hours before the meeting from a member of the public. This individual has provided comments on the license process for congregate living and social services.

Chair Bosley read the letter into the record:

To the Members of the Joint Committee of the Planning Board & Planning, Licenses, & Development Committee:

Thank you all for continuing to work diligently and conscientiously on the proposed draft for the Keene Land Development Code.

At your meeting on January 11th, there was much debate concerning the criteria for license renewal, license revocation, and length of probation periods. Each person stated valid reasons to support his/her opinions.

As you finalize the specifications for the Land Development Code, please keep in mind that every program, especially those in the Congregate Living and Social Service category, has the potential to harm the clients which it is designed to serve

You have taken great care in drafting the finer points of the conditional use permit. You are also considering the guidelines for programs which were established prior to the CUP requirement, making sure the license renewal process for these groups is based upon fair assessments of the organizations' operations.

During the deliberations, it sometimes appears that for any potential program, a battle is being waged between the neighboring property owners and the director of that program. This perspective is counterproductive.

The CUP protocols, and licenses for non-CUP programs, should protect both the clients receiving care/services from these programs as well as protecting the neighborhoods where they are established.

Clients seeking services are sometimes very vulnerable, and may fall into a population category that is drastically under served. Even if there is a desperate need for a program, it is essential that the program meet all the criteria that is required before opening the doors for these clients. If the program is haphazardly thrown together without the appropriate organization, funding, and other elements to establish a solid plan of action, the clients may potentially suffer even more than surrounding neighbors. These people need help and compassion, but they also require protection. Please make sure that the authorized parties who are responsible for making those decisions, keep this in mind. They cannot bend the rules to open the doors of a program prematurely; to do so would be playing with the lives of those people needing help.

In addition, the discussion about criteria for license revocation and subsequent probation for programs not adhering to their specified guidelines, included differing viewpoints. If a program was carefully designed initially it would be less likely to develop significant issues. However, if problems become apparent, the clients' welfare, not just the neighbors, should be considered. The number of calls to emergency services is irrelevant without the proper context. That statistics need to be analyzed appropriately.

One individual creating havoc in a program should not have the potential to destroy an organization; the program should be structured in a manner that has a strategy for dealing with a client that threatens the wellbeing of everyone involved.

If a program is operating so poorly that license revocation is being considered, then giving that program a lengthy probation period is not just. A two year probation would be detrimental to

the clients and the neighbors. License suspension, or a reasonable probation period would be indicated.

Thank you taking the time to read my viewpoints. We are all in this together, to create a community that works together for the benefit of all.

Sincerely yours,

Anne Knight

26 Prospect Street”

With that Chair Bosley asked for comments from the Board about anyone offering counter points about creating the licensing board. There were no comments.

Ms. Kessler then addressed proposed map changes. She indicated staff was made aware about one property that is proposed to change from the Central Business Limited Zoning District to the proposed Downtown Transition District. This property is 21 Davis Street, the former Anderson Florist, which continuing to be used as a commercial use. By placing it in Downtown Transition it will become a non-conforming use. All the other properties in Central Business Limited in this area are going to become Downtown Core. Staff is proposing this property be placed in the Downtown Core Zoning District, and the property owner is in favor of this change. The committee was in favor of this change as well.

Ms. Kessler noted that at the November meeting there were concerns raised about gaps in the transition district. She highlighted these areas on the proposed zoning map. She noted that there is an area to the north of Winchester Street and to the South of Davis St, between Wilson Street to the east and Ralston Street to the west where the High Density Zoning District would abut the Downtown Growth District. She indicated that staff recommended that this area be revisited in the future to better understand the intent of the property owners and residents of this area for future development before the zoning is proposed to change. She then directed attention to the gaps in the transition district along Water Street. In this area there are locations where the Residential Preservation Zoning District, which was recently established in 2016 with the intent of returning this area to a low density single family district, abuts the proposed Downtown Growth District. She also noted that there are areas along Church Street which are zoned high density will be right up against downtown growth. However, Beaver Brook serves as a natural buffer between these properties along Church Street and the Downtown Growth parcels.

Ms. Kessler stated staff is looking for input from the committee if they would like staff to look at map changes to address this issue.

Councilor Workman asked whether staff had any ideas as to where they would put a transition district to fill this gap. Ms. Kessler stated that there are options for extending the proposed Downtown Transition District along Water Street. Either properties that are proposed for Downtown Growth be placed into the proposed Downtown Transition District or the properties along the south side of Water Street, which are currently in Residential Preservation, be placed in Downtown Transition. The properties that are in the proposed Downtown Growth along Water Street that could be placed in Downtown Transition to address this gap in a transition district is the site of Cityside and the former Tom’s Autobody parcel. is also the former Tom’s Auto Body site at this corner.

Councilor Workman noted the area close to the intersection of Community Way, Water Street and Grove Street which doesn’t quite fit into Downtown Transition or Downtown Growth

Districts. If she has to choose it would be to place some of those parcels in Downtown Transition. Chair Bosley clarified the sites at the corner of Community Way was proposed to be in the Downtown Growth District due to their size. Ms. Kessler agreed that is the case for Cityside, but also because of the existing commercial setting at the former Tom's Auto site. She added the property owners would need to be notified about any changes proposed to zoning designations of these parcels. Councilor Greenwald suggested staff talk to the property owners as to their desire.

Chair Bosley asked for explanation of the Residential Preservation District. Ms. Kessler stated this is an existing zoning district adopted in 2016 in an effort to bring neighborhoods close to downtown back to more of a single family neighborhood. Uses are geared more toward single family uses and other low impact uses. Ms. Kessler added staff was careful not to undo something that was just recently put in place during the Marlboro Street rezoning. Mr. Lamb added the Residential Preservation District came out of a lot of community involvement and this neighborhood, which was mostly medium density prior to 2016, was looking for a neighborhood district change. Ms. Kessler stated if staff was to consider a map change, it would be along Water Street. Chair Bosley stated she could not see changing this map without impacting the Residential Preservation District. Mr. Lamb suggested perhaps a change to the two parcels on the corner of Grove Street and Water Street, one of which is a parking lot. This concluded staff presentation.

Chair Bosley asked for public comment next.

Chuck Redfern of 9 Colby Street referred to the Residential Preservation District which the Chair just referred to and felt it would be difficult to convince property owners in this area to agree to a zoning change. He stated he could see Cityside Apartments being considered residential in some nature even though it might be higher in density, same would be true with the Tom's Auto site. Mr. Redfern added the neighbors are concerned about the Tom's Auto site and he shares this concern. Mr. Redfern asked whether there is a difference between a transition zone and a buffer zone. Ms. Kessler responded by saying, the terms transition zone and buffer zone are interchangeable.

Tom Savastano of 75 Winter Street referred to Pages 25-19 and 25-20 which include the criteria for a Special Exception. He asked why impact to property values is not included in the revised language. Ms. Kessler felt the other criteria outlined relate to property values rather than specifically spelling it out. The reason is because it is hard to make that determination at a certain point in time. She asked for clarification from Mr. Lamb or Mr. Kopczynski. Mr. Lamb stated he does not recall a specific reason but added it is an individual criteria that shows up in limited applications in the review of permits and in the review of various city boards (zoning and historic district).

Mr. Savastano felt this was a central issue and should be carried forward. He also referred to paragraph c on Page 25-20 says the *proposed use will be established, maintained and operated to be harmonious with the surrounding area and will not impede the development use and enjoyment of adjacent property*. He felt the term enjoyment was very subjective and should be raised as an issue and felt property value should be included.

Ms. David Curran of 16 Prescott Street addressed the committee next and stated he agreed with Mr. Redfern's comments and hoped the committee will move forward with a more formal buffer

zone in this area as there was much effort put into Marlboro Street rezoning and did not want this effort to be wasted.

Mr. Tom Stevens of 122 Water Street addressed the committee next. Mr. Stevens referred to the map which referred to the transition districts. Mr. Stephens noted he is the owner of the former Tom's Auto site and indicated he agrees with Mr. Lamb as far as enlarging the Downtown Transition District in the area of Grove St and Water St, and added he would like his property to remain proposed for Downtown Growth. Regardless of what business should go into this site, Downtown Growth would be preferred zoning. He noted the site was previously zoned to Business Growth and Reuse without his support.

Loretta Simonds of 79 Woodburn Street stated as she has previously stated at other meetings, she was opposed to locating congregate living uses in the Medium Density District. Living in Ward 3, there is more subsidized housing in this district compared to other areas. She stated property values are supposed to be a criteria of all decisions by land use boards, as stated in NHRSA 674:17. They are also supposed to lessen congestion in the streets, secure safety from fires, panic and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the overcrowding of land and to avoid undue concentration of population. Ms. Simonds noted the 100-year history of zoning regulations have always placed preserving property values as one of the top five reasons for zoning. She indicated she was disappointed to read in the last set of minutes about the Fair Housing Act and added zoning and the Fair Housing Act have nothing to do with each other. She felt if zoning was done properly, there will be areas that allow for any kind of housing that will fall under the Fair Housing Act. The Act should not have the right under every district in every city or town.

Ms. Simonds noted experience tells her that people who are battling substance abuse need a safe place where they can recover. She added people with substance abuse issues lack impulse control. She noted an incident this summer where someone had overdosed and Woodburn Street was clogged up with ambulances and fire trucks for about ½ an hour. She referred to a death across the street which brought in the coroner, state police etc.

Ms. Simonds referred to an incident at a prior property where a neighbor was housing a felon and she had the police in the backyard with guns drawn – she indicated this is an unpleasant experience to have to endure. Ms. Simonds noted putting together a licensing board for when something goes wrong, is saying the City is anticipating something will happen and if it is too much of a nuisance it can be shut down; she felt this was a backwards way to do things. Woodburn Street is a family neighborhood with long term residents and asked that congregate living not be introduced into this neighborhood. She asked zoning be put together in a manner that protects property owners.

Attorney Gary Kinyon of 250 Chapman Road expressed his appreciation for the work being done by staff and the committee. He recalled a variance application for the former Woodward Home on Court Street to locate a small group home. Attorney Kinyon stated what is being proposed for congregate living is a Conditional Use Permit (CUP); at the present time the most difficult approval to obtain is a variance, followed by a special exception (from the Zoning Board), and the easiest is CUP (from the Planning Board). With respect to the Woodward Home which went before the Zoning Board, located in the Medium Density Zone. If that proposal had been made with the proposed conditions, that proposal instead of a variance from the Zoning Board, a quasi-judicial board, it would only have required a CUP from the Planning Board. Attorney Kinyon

felt for an area as large as the Medium Density Zone and for an array of uses as large as is contemplated by congregate living it is too much approval discretion left with a CUP process, rather than being placed in the Zoning Board for either a variance or a special exception. For the Woodward Home one of the criteria not met by the applicant is that the proposed application will not lessen property values for the surrounding neighborhood and this is what was referred to previously by Mr. Savastano. Even though this does not have to be a single standard to be met, it needs to be a part of items that need to be addressed and met for a variance or a special exception application.

Ms. Kathleen Gagnon of 203 North Street addressed the committee and referred to the proposed and existing criteria for special exception and noted the proposed criteria did not mention the impact to property values and stated she would like to add her name to Tom Savastano and Gary Kinyon's comments to add this language to the proposed language so the language is clear.

With no further comment, the Chair closed the public hearing. The Chair stated any further comments, could be forwarded to city staff and will be brought forward at the next meeting.

A motion was made by Councilor Greenwald to continue the public hearing for Ordinances O-2020-10 & O-2020-11 to the February 8, 2021 Joint Committee meeting. The motion was seconded by Councilor Phil Jones and was unanimously approved by roll call vote.

4) Adjourn

The meeting adjourned at 9:00 PM.

Respectfully submitted by,
Krishni Pahl, Minute Taker

Reviewed and edited by Tara Kessler, Senior Planner