

City of Keene
New Hampshire

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

Monday, February 8, 2021

6:30 PM

Remote Meeting via Zoom

Planning Board

Members Present:

Pamela Russell Slack, Chair
David Orgaz, Vice Chair
Mayor George S. Hansel
Councilor Michael Remy
Emily Lavigne-Bernier

Planning Board

Members Not Present:

Andrew Weglinski
Roberta Mastrogiovanni
Gail Somers
Tammy Adams, Alternate

Planning, Licenses &

Development Committee

Members Present:

Kate M. Bosley, Chair
Mitchell H. Greenwald
Philip M. Jones
Gladys Johnsen
Catherine Workman

Planning, Licenses &

Development Committee

Members Not Present:

All Present

Staff Present:

Rhett Lamb, Community
Development Director Tara
Kessler, Senior Planner
John Rogers, Building and Health
Official Med Kopczynski, Director
Economic Development and
Special Projects
Mari Brunner, Planner

I) Statement of Authority to Hold Remote Meeting

Chair Russell Slack began the meeting by reading the following statement with respect to holding remote meetings

II) Call to Order & Roll Call

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

III) 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. This proposed map change would affect 316 parcels, encompassing a total land area of approximately 220-acres, and would result in the removal of the Central Business and Central Business Limited Zoning Districts.

A. Review of and vote on proposed amendments to O2020-10 and O-2020-11, including amendments to the proposed Land Development Code and the proposed Zoning Map

Senior Planner Tara Kessler began by reminding the committee where they are in this process. She noted that it is possible this would be the final meeting of the public workshop phase on these ordinances. Following the public workshop phase, there will be public hearings scheduled by the Planning Board and the Historic District Commission and a public hearing before the City Council and, ultimately, a final vote by the Council. Ms. Kessler stated for tonight's meeting she will be reviewing the amendments proposed to the ordinances and the Land Development Code shared in a memorandum dated February 1, which was included in the agenda packet for this meeting. Ms. Kessler began a review of each amendment. She noted that staff propose to remove from O-2020-10 all reference to new or amended language to Chapter 46 of the City Code of Ordinances, related to the establishment of a Congregate Living and Social Services license, and to introduce this language to City Council as a separate ordinance. Staff needs more time to complete the language related to licensing for congregate living and social services uses. As Chapter 46 is outside of the proposed Land Development Code, changes to this chapter will be sent to the Planning, Licenses and Development (PLD) Committee for their review and recommendation to City Council. Ms. Kessler noted that because the proposed Land Development Code references the congregate living and social services license, it will be important for the Council to vote on O-2020-10 (which establishes the proposed Land Development Code) and the ordinance detailing changes to Chapter 46 at the same time. Ms. Kessler noted that if the Committee is in favor of this amendment, City staff will introduce the topic of changes to Chapter 46 to the PLD Committee at their meeting on March 24, 2021. Councilor Jones asked about the vote that would be taken today. Ms. Kessler stated if the committee was ready for a vote today the Committee would vote on the proposed amendments to the ordinances, and before it is sent out of the public workshop phase the Planning Board would vote that this ordinance as amended is consistent with the Master Plan, and the PLD Committee would vote to request the Mayor set a public hearing on the amended ordinance.

She noted that staff propose to include all terms and definitions for rules of measurement outlined in Article 1 and principal permitted uses outlined in Article 8 into the Definitions Chapter for ease of reference. Ms. Kessler stated that the following amendment is one that has been discussed at previous meetings and there has been expressed support for by Committee members. This amendment is to allow for Small Group Home (this would allow for eight unrelated people to live together in a group home setting) by Conditional Use Permit (CUP) in all zoning districts that permit single-family dwellings, and to be clearer that this use is also allowed where Large Group Homes are allowed. With this amendment, the following districts would permit Small Group Homes: Rural, Residential Preservation, Low Density, Low Density 1, Medium Density, High Density, High Density-1, Neighborhood Business, and Downtown Transition. Ms. Kessler noted that staff are proposing for Large Group Home to be added to the High Density 1 zoning district, which currently permits both single family residences and

multifamily residences. She noted that there are only a handful of parcels in this zoning district.

Ms. Kessler stated that there were concerns raised at a previous meeting about whether the number of residents permitted in a Domestic Violence Shelter would include children. Staff took the feedback and have proposed excluding minor children of shelter clients from the proposed occupancy maximum of 12. The amended language would read as follows: “Domestic violence shelters located within or directly adjacent to residential zoning districts shall not have more than 12 occupants at any time, *excluding the minor children of shelter clients.*” Councilor Bosley clarified that there will be limitations placed on occupancy based on Fire regulations, which would include minor children. Ms. Kessler confirmed that fire, life and Code safety codes would place limitations on occupancy.

Ms. Kessler noted that this amendment is to address an error in Table 8-1 Permitted Principal Uses by Zoning District. The proposal is to change “P” to “P1” wherever it appears for “Domestic Violence Shelters,” as there are limitations for how this use may be operated.

Ms. Kessler noted that staff propose to amend the definition of Domestic Violence Shelter. Currently the definition read as “*The facility may also offer a variety services to help natural persons and their children including counseling and legal guidance.*” In speaking with a member of the public there was a concern about use of the term natural persons, which might allow for people who are not residents of the shelter to receive services on site. Staff’s suggestion is to delete the replace the term “natural persons” with “shelter clients.”

Ms. Kessler noted that at previous meetings there was agreement from the Committee that Solar Energy Systems should be allowed in the Industrial Zoning District by right without requiring a conditional use permit. Staff have incorporated edits to the proposed Code to account for this change.

Ms. Kessler noted another change to Table 8-1. Staff had inadvertently included Fraternity and Sorority as a permitted use in the High Density Zoning District. This use would only be permitted in Downtown Institutional.

Ms. Kessler noted that based on feedback from the Joint Committee at a previous meeting, staff are proposing to remove the requirement that applications for a Congregate Living and Social Services Conditional Use Permit include an Operations and Management Plan as part of their application submission. This will be a requirement of a license for Congregate Living and Social Services but no longer a requirement for a CUP.

Ms. Kessler noted that questions were raised at the December meeting about language in the Site Development Standards Screening Standards related to the side and rear of a building. To provide enhanced clarification staff are proposing to amend Section 20.6.2.A.1 to read “*Waste collection, waste compaction, recycling collection shall not be located along the building frontage or along a building facade with a primary entrance and shall be screened from view from adjacent property or public rights-of-way (not including alleys).*” Similarly, staff propose to edit the screening standards for drive-through businesses as follows: “*Drive-through windows and lanes shall not be located along the building frontage or along a building facade with a*

primary entrance.”

Ms. Kessler noted Article 25 at the present time includes application/permit review and approval procedures. Section 25.4 is specific to amendments to the land development code. Today the Planning Board and Historic District Commission have statutory authority over their own regulations. Articles 19 and 20 are the purview of the Planning Board and Article 21 is the purview of the Historic District Commission as well some sections of Article 25 as it relates to application processes. In the current proposed version of the Land Development Code, it was suggested that any time the Planning Board made changes to their regulations (Articles 19, 21) an entire Joint Committee process will be required plus a Planning Board public hearing which staff felt was rather onerous. As a result, staff is proposing that for the Planning Board with respect to Articles 19, 20, and Sections 25.10 through 25.14 of Article 25, and the Historic District Commission with respect to Article 21 and Section 25.15 of Article 25 – if there are changes proposed the respective board would a public hearing and those amendments would go before the PLD Committee for a recommendation to the City Council.

Ms. Kessler noted the reason the Council will be voting on these specific Articles is because placing all these regulations in one document in the City Code, ultimately the City Council has to adopt and make changes to City Code.

Ms. Kessler stated that another change to address a mistake, is to amend Section 25.5.6.B, which relates to the review criteria for variances as follows: Replace the phrase “*of this chapter*” in “*The proposed variance is not contrary to the spirit of this chapter*” with “*of the Zoning Regulations.*”

Ms. Kessler stated that staff are proposing an amendment to Section 25.9.5 related to the procedure for the zoning administrator to issue a written interpretation. She stated that the language being proposed is that “*The Zoning Administrator shall publish their written interpretation on the City website within 5 calendar days from the date of issuance.*” This would allow for greater transparency of administrative decisions.

Ms. Kessler noted that the Site Development Screening Standards do not clearly address how or if small-scale solar energy systems require screening. Ms. Kessler noted that staff will be presenting changes related to screening of small-scale and roof-mounted solar energy systems at the Planning Board public hearing it will hold on Article 21 of the proposed Land Development Code.

Ms. Kessler noted that the standards related to window replacement in the Historic District Regulations in Article 21 need to be amended to be clearer about what is required for replacement of non-historic windows. Staff will present proposed edits to the Downtown Historic District Regulations that seek to provide greater clarification on standards related to window replacement at the public hearing the Historic District Commission will hold on Article 21 of the proposed Land Development Code.

Ms. Kessler noted that the changes she would be reviewing next relate to changes to the proposed zoning map, and O-2020-11. She stated that at a previous meeting the Committee was

in favor of placing the parcel at 21 Davis Street, which is currently located in the Central Business Limited District and had been proposed to go into Downtown Transition, into the Downtown Core District. She noted that the amended proposed zoning map reflects this change.

Ms. Kessler noted that there had been conversation at previous meetings about gaps in the transition district along Water Street. Staff's suggestion is for the parcel at 92 Water Street, which is the site of the City Side Apartments and is located at the corner of Community Way and Water Street, to be located in the Downtown Transition District. Currently, it is proposed to go from the Central Business Limited District to the Downtown Growth District.

Hearing no questions or comments on the above amendments. Ms. Kessler went on to say there have been concerns raised by members of the public regarding the consideration for diminution of property values as a criteria for special exception and for CUP. She indicated staff is not proposing to make this change and felt this is something the committee might wish to discuss further.

She further stated there was also a comment made by a member of the public regarding the purpose of zoning and that the primary purpose of zoning is for protecting property values. This individual cited NH RSA 674:17 in their testimony. Ms. Kessler referred to NH RSA 674:17 which states that the zoning ordinance shall be designed to:

- (a) To lessen congestion in the streets; RSA 674:17*
- (b) To secure safety from fires, panic and other dangers.*
- (c) To promote health and the general welfare;*
- (d) To provide adequate light and air;*
- (e) To prevent the overcrowding of land;*
- (f) To avoid undue concentration of population;*
- (g) To facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care;*
- (h) To assure proper use of natural resources and other public requirements;*
- (i) To encourage the preservation of agricultural lands and buildings and the agricultural operations described in RSA 21:34-a supporting the agricultural lands and buildings; and (j) To encourage the installation and use of solar, wind, or other renewable energy sources.*

It also states:

Every zoning ordinance shall be made with reasonable consideration to, among other things, the character of the area involved and its peculiar suitability for particular uses, as well as with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

Ms. Kessler explained the purpose of zoning is many things and part of it is consideration of property values, but whether it is specifically to protect property value is not clearly stated. However, by structuring zoning to address the list of considerations above, property values are in fact being addressed and potentially preserved. Ms. Kessler asked for input from other staff members present tonight.

Mr. Kopczynski addressed the committee and stated when staff was given this charge for the zoning change, there were a number of different objectives such as modernization, streamlining etc. Staff did talk about consideration for property values but the reason it was not included is because there are no specific standards for assessing how a proposed use might influence future property values of surrounding properties. Unlike for instance when it comes to traffic, there is the ITE Manual. However, he noted it always up to the Committee to decide how it wishes to move forward with this issue.

Mr. Lamb added there are property appraisers who are certified for the purpose of establishing property values. Mr. Lamb stated what is being asked is to predict whether or not a future change will result in decrease of value. He indicated what an appraiser would offer could give some valuation, but staff do not want to set up a system where there could be testimony from appraisers giving differing opinions on the same topic. Mr. Lamb felt as a result, there did not need to be a criteria specific to value of property.

Councilor Johnsen felt eight people seemed like a large number for the purpose of a group home. Councilor Bosley stated she isn't sure whether this was the exact reason the number eight was chosen; but thought it was because for any duplex situation there could be four unrelated people living on each side of that duplex, which could constitute for eight. She noted this number could appear in most of these neighborhoods. Ms. Kessler added group home is an allowed use under the current zoning code with an unlimited number of people and except for residential preservation, all other zoning districts that permit single family homes also permit the location of group homes. What is being proposed significantly reduces the density of group homes and also creates a review process by the Planning Board.

Councilor Jones referred to the statute regarding zoning Ms. Kessler had referred to earlier and recalled this statute had been amended when Jeanne Shaheen was the Governor to include promoting smart growth principles – and asked for clarification as to whether this section was deleted or whether it was in a different section. Ms. Kessler stated this language is under RSA 674:21 which refers to Innovative land use.

B. Public Comment

With that the Chair asked for public comment. Attorney Gary Kinyon addressed the committee on behalf of the Surry Village Charter School with reference to its facility located on Court Street. Attorney Kinyon noted back in November the Woodward Home had an application before the Zoning Board of Adjustment for the location of a Group Home. This property is located in the Medium Density District. Attorney Kinyon noted under the current zoning a Group Home in the Medium Density District is only allowed with a special exception and one of the conditions under this special exception is that it will not diminish surrounding property values. At that hearing there was fair amount of opposition, from him on behalf of the Surry Village Charter School, and a critical element considered by the Zoning Board to deny the Special Exception is that the proposed use will not diminish property values in surrounding neighborhoods. Attorney Kinyon stated he felt then and feels now that this is a critical element to a special exception requirement for a group home to be located in a Medium Density District and felt this was an

important item for the Joint Committee's amendment consideration.

Attorney Kinyon went on to say, the Medium Density District in general, specifically in this area of the city, is primarily a residential zone and the purpose of the residential zone is to preserve residential uses. The group home proposed for this area was not a residential use and required a special exception to be located in this area. Under the proposed zoning, the permitted uses in the Medium Density District include a group home (small) and a domestic violence shelter. A domestic violence shelter will be permitted in the Medium Density District with certain conditions met. A group home (small) will be permitted with a CUP not a special exception and felt this diminishes the standards that need to be met for group home (small) especially to show that this use will not diminish property values in surrounding neighborhoods. Attorney Kinyon stated it is staff's perspective that a standard of diminishing value is relatively subjective and brings into play experts. The attorney noted the standard for diminishing value has been a standard for application for variances under zoning and for special exception applications in Keene. He felt it is a necessary inclusion for special exception applications.

Attorney Kinyon went on to say when a group home is introduced into a neighborhood like the Medium Density District, the city needs to give the abutters who may not want the proposed use in their neighborhood and the ability to show the board granting the approval that the proposed use will hurt their property value. Even though this is not the purpose of zoning, preserving property value is an important aspect for the Council to consider in adopting these zoning ordinance amendments. Attorney Kinyon felt this is an important item that should not only be preserved for special exception standards but also should be adopted into the CUP standards.

Chair Russell Slack asked for staff's response to these comments. Mr. Lamb responded by saying staff does not disagree that property values are important, but what staff is saying is that they can find a middle ground with oversight with conditions for CUP without explicit discussion of property values. He stated he has a lot of respect for Attorney Kinyon's opinion and felt it is something the committee should continue to discuss.

Mr. Tom Savastano of 75 Winter Street, Keene stated he too agrees with Attorney Kinyon and stated property values are such an inherent concern for people who live in the city and have invested in this city. He felt this is a fundamental issue and needs to be included in this code. Mr. Savastano stated he joined and meeting late and questioned Ordinance 2020-11-A, Section 46-561 which had a lot of red lines through it and asked whether this was changing the fundamental nature of what has been worked on. Ms. Kessler stated what is being proposed is that all references to chapter 46 be included in a separate ordinance, which would be introduced to the Planning, Development and Licenses Committee which will give staff more time to amend proposed language in Chapter 46 related to licenses for Congregate Living and Social Services.

With no further comment, Chair Russell Slack closed the public hearing.

Councilor Johnsen stated after listening to the prior two speakers this seems like a hard

conversation. She indicated she is glad Mr. Lamb stepped in, as it sounds like an “us versus them” conversation and when decisions regarding licenses are made, the committee needs to be very aware of that.

Mayor Hansel stated staff has worked very hard on this item. They have taken opposing viewpoints and made it work. He stated in an instance like this, not everyone is going to be happy with the outcome, but stated he is happy overall with the product and is ready to move it forward. Chair Russell Slack agreed with the Mayor and felt the staff has done the best they can with this and would like to move this item forward tonight. Councilor Bosley stated she too was ready to move this item forward tonight.

A motion was made by Councilor Kate Bosely that the Joint Committee amend O-2020-10 and O-2020-11 in accordance with the amendments proposed in the Memorandum dated February 1, 2021 included in the meeting packet for the February 8, 2021 Joint Committee meeting, including, but not limited to, the removal of Congregate Living and Social Services licensing provisions from O-2020-10, which is to be presented in a separate ordinance for submission to the City Council, and in accordance with the following amendments presented by City staff at the February 8, 2021 meeting:

- a. Changes to the definition of Domestic Violence Shelter in Section 8.3.4.A of the proposed Land Development Code.
- b. Changes to Section 25.4 related to the amendment process for Articles 19 through 21 and sections of 25.10 through 25.15 of the proposed Land Development Code related to the Planning Board and Historic District Commission regulations and application procedures.

A motion was made by Councilor Mitch Greenwald that the Planning Licenses and Development Committee request the Mayor set a public hearing on O-2020-10-A and O-2020-11-A. The motion was seconded by Councilor Phil Jones and approved unanimously by roll call vote. Ms. Kessler noted these motions conclude the public workshop phase for these ordinances and they would move on to the public hearing phase. The Planning Board Public would be holding a public hearing on Article 19 (Subdivision Regulations), Article 20 (Site Development Standards), and sections of Article 25 related to the Planning Board site plan and subdivision application review process, on Monday, February 22, 2021 at 6:30 pm. The Historic District Commission would conduct a Public Hearing on Article 21 (Downtown Historic District Regulations), and sections of Article 25 on Wednesday, March 17, 2021 at 4:30 pm.

The Planning, Licenses, and Development Committee will meeting on the topic of Congregate Living and Social Services License on Wednesday, March 24, 2021 at 7:00 pm. Ms. Kessler noted information about these public hearings will be available on the Project website: www.keenebuildingbetter.com. Following these hearings the City Council will hold a public hearing on the ordinance at the earliest on May 6 and a take effect date for the proposed Land Development Code is anticipated for July 1, if it is voted on. Ms. Kessler added staff is always available to the public. It was decided the March 8 meeting will be canceled as it relates to this item.

IV) Adjournment

There being no further business, Chair Slack adjourned the meeting at 7:57 PM.

Respectfully submitted by,
Krishni Pahl, Minute Taker

Reviewed and edited by,
Tara Kessler, Senior Planner