

City of Keene
New Hampshire

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

Monday, January 9, 2022

6:30 PM

**Council Chambers,
City Hall**

Planning Board

Members Present:

Pamela Russell Slack, Chair
Mayor George S. Hansel
David Orgaz
Emily Lavigne-Bernier
Harold Farrington
Armando Rangel
Randyn Markelon, Alternate

Planning Board

Members Not Present:

Councilor Michael Remy
Roberta Mastrogiovanni
Gail Somers, Alternate
Tammy Adams, Alternate
Kenneth Kost, Alternate

Planning, Licenses &

Development Committee

Members Present:

Kate M. Bosley, Chair
Michael Giacomo
Gladys Johnsen
Raleigh C. Ormerod

Planning, Licenses &

Development Committee

Members Not Present:

Philip M. Jones

Staff Present:

Jesse Rounds, Community
Development Director
Mari Brunner, Senior Planner

I) Roll Call

Chair Russell Slack called the meeting to order at 6:30 PM and explained the different the two bodies present today. A roll call was taken next.

II) Approval of Meeting Minutes – October 17, 2022

A motion was made by Mayor Hansel to approve the October 17, 2022 meeting minutes as presented. The motion was seconded by Emily Lavigne-Bernier and was unanimously approved.

III) Public Workshop

Ordinance O-2022-19 – Relating to amendments to the City of Keene Land Development Code - Zoning Regulations & Application Procedures. Petitioner, City of Keene Community Development Department, proposes to amend sections of Chapter 100 Land Development Code

(LDC) of the City Code of Ordinances to clarify language within the zoning regulations in Articles 9, 11, and 13 of the LDC; Amend Article 15 “Congregate Living & Social Service Conditional Use Permit” to add a new section entitled “Conditional Use Permit Waiver,” and; Amend Section 25.4.3 of Article 25 “Application Procedures” to modify the process for amending the sections of the LDC that are outside the zoning regulations.

Senior Planner Mari Brunner addressed the Committee and stated the amendments being presented today are a collection of items staff has been collecting over the last six months. This is the public workshop phase of the ordinance and the Committee can still make changes to the proposed ordinance.

Ms. Brunner then went over the amendments:

(1) Section 9.3.2.2 – There is a three-foot setback from the side property line. The proposed amendment would clarify that this does not apply to a common driveway that serves more than one lot.

(2) To clarify a section within Article 11 – Surface Water Protection Conditional Use Permit (CUP) section of the Zoning Regulations. There is a section that outlines which activities are permitted and not permitted with a CUP.

The permitted use says as follows “*New driveways for single and two family homes, provided that “The driveway serves to access uplands on a lot(s) of record that existed at the time this Overlay District was first adopted.”* This means if there was a parcel of land in existence prior to the Surface Water Protection Ordinance going into effect and had to cross a wetland buffer to construct a driveway – that landowner would be permitted to do so.

The uses permitted with a CUP are construction of new roads, driveways (excluding single- and two-family driveways), and parking lots.

The staff proposal is to delete the stricken as follows: “Construction of new roads, driveways (~~excluding single- and two-family driveways~~), and parking lots.” Ms. Brunner explained this is because not all single and two family driveways are exempt; only lots of record that existed prior to the Surface Water Protection Ordinance going into effect.

Mayor Hansel stated he did not like treating different landowners differently, just because the City passed an Ordinance on a certain date. The Mayor noted the City has regulations for setbacks and so does the State, and questioned how the Surface Water Protection Ordinance has played out for residential properties.

(3) Article 13 – Telecommunications Ordinance – staff would like to clarify within Section 13.1.3.C that *collocation* and *modification* applications, as defined in NH RSA 12-K, are exempt from CUP and site plan review. Ms. Brunner stated this is something that is set at the State level, and they are exempt from any local land use permitting and zoning. She explained the definition as outlined in state RSA means that if there is already a telecommunication array and you want to add to it and don’t meet the threshold for substantial modification, then you are exempt from local land use permitting and zoning. The way it is worded in the Land Development Code today

created a loophole: “*Telecommunications facilities placed on existing mounts, building or structures, or modifications to existing telecommunications facilities would be exempt.*” The way it is written could be interpreted as an exemption for a brand-new facility being placed on a building where there are no existing telecommunication antennae. What staff is trying to emphasize is that the exemption is for co-location or modification to an existing facility.

Councilor Bosley stated there are ordinances that were written for small wireless facilities in the public right of way and there are criteria that need to be followed. The Councilor asked whether those criteria need to be adhered to here. Ms. Brunner stated what is being discussed is for installation on private property. Small wireless facilities are a completely different licensing process under City Code outside the land development code (through Public Works). The proposed new language would read as follows:

*The installation of new ground-mounted **or structure mounted** towers and antennas, if camouflaged, or a substantial modification to an existing tower or mount that would maintain its camouflage, may occur within Zone 2 or Zone 3 of the View Preservation Overlay.*

(4) Article 15 – Amendment - - Congregate Living & Social Service Conditional Use Permit – The proposal is to add a section to allow the Planning Board to grant waivers on a case-by-case basis from the review criteria in Section 15.2. To grant this waiver the Board would need to make sure that all three waiver criteria have been met.

Ms. Brunner stated the reason staff is bringing this forward is because there have been a few applications that have come forward to the Planning Board, and if an applicant is looking for relief from one of these criteria they would have to go before the Zoning Board for a variance. There are variance criteria that would need to be met; one being unnecessary hardship which is a difficult criterion to meet.

Councilor Bosley asked Ms. Brunner to review the CUP criteria being referred to that would apply to the waivers. Ms. Brunner went over the Review Criteria as follows:

Section 15.2 Review Criteria (Land Development Code):

- A. *The nature of the proposed application is consistent with the spirit and intent of the Zoning Regulations, this LDC and the City's Comprehensive Master Plan, and complies with all the applicable standards in this LDC for the particular use in Section 8.3.4.*
- B. *The proposed use will be established, maintained, and operated so as not to endanger the public health, safety, or welfare.*
- C. *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. In addition, any parking lots, outdoor activity area, or waiting areas associated with the use shall be adequately screened from adjacent properties and from public rights-of-way.*

- D. The proposed use will be of a character that does not produce noise, odors, glare, and/or vibration that adversely affects the surrounding area.*
- E. The proposed use will not place an excessive burden on public infrastructure, facilities, services, or utilities.*
- F. 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.*
- G. 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.*
- H. The proposed use will be located in proximity to pedestrian facilities (e.g. multiuse trails and sidewalks), public transportation, or offer transportation options to its client population.*

(5) Amend Section 25.4 to modify the procedure for amending the LDC. Ms. Brunner explained the LDC included many sections of City Code into one document. The different sections of the LDC had different processes as to how they were amended but they are now one general process. It is the advice of the City Attorney and staff that they be separated out.

Sections 1-18 of the LDC are the Zoning Regulations which would continue to follow the zoning amendment process. There will be a first Reading of the Ordinance at City Council. It then gets referred to a public workshop before the Joint Committee of the Planning Board and PLD Committee. It is then referred back to City Council where the Mayor sets a public hearing and then after the public hearing is referred to PLD Committee for a recommendation. Based on the recommendation from the PLD Committee the item goes back to City Council for a 2nd Reading. At that time, if PLD asks for more changes, it restarts the process, or City Council could act on it that night.

Currently, Articles 19-28 at the present time have to go through the same process. What is being suggested is that the Planning Board regulations would go through a public hearing before the Planning Board and then follow the regular ordinance process with City Council (it cuts out the public workshop component). Similarly, the Historic District Commission Regulations would go through a public hearing before the Historic District Commission before going through a City Council ordinance process. The rest of the LDC (Articles 22, 23, 24, sections of Article 25, and 26-28) would go through the regular City Council ordinance process.

(6) This item was left out of the Ordinance accidentally, and staff are asking that the Committee include it in the ordinance and create an “A” version – Currently in Article 9, Section 9.2.7.C.2. of the LDC provides for the ZBA to grant a major parking reduction up to 50% using a special exception process. Subsection 2 says, “*In determining whether to grant a special exception, the Zoning Board of Adjustment shall make the following findings in addition to those required for a special exception.*”

- a. The specific use or site has such characteristics that the number of required parking spaces is too restrictive.*

b. *The requested reduction will not cause long term parking problems for adjacent properties or anticipated future uses.*”

Staff is suggesting removing the phrase “*in addition to those required for a special exception.*”

Zoning Administrator John Rogers addressed the Committee and explained there was an application that came before the Zoning Board of Adjustment and the Board had a difficult time applying the special exception criteria and applying appropriate Findings of Fact. In reviewing the minutes and discussing the issue further the Board felt the items outlined above were the most appropriate criteria for an accessory parking on a site. Mr. Rogers added for this reduction the applicant would always have to provide for a parking study.

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

Chair Bosley stated she was not comfortable with the proposal for the Planning Board to waive the CUP criteria. She indicated developing the social services ordinance was a controversial process and it was intended to be completed even before land development code was considered; it was eventually folded in. The Councilor stated she did not hear a single CUP criterion that is not appropriate to be included in that ordinance and not requiring applicants to meet. She suggested if staff feels it is necessary – the item should be considered separately.

Councilor Ormerod stated he heard what staff said about Article 15 that it has some value in having the Board that reviewed it in the first instance to review it and decide if it is necessary. The Councilor stated he does not quite agree as there is a legislative process and a judicial review process which are separate and did not feel the judicial process should be removed.

Mayor Hansel felt there was an argument to be made in having these organizations coming just before the Planning Board which he did not feel was removing public’s right to bring their concerns forward. He felt one of the benefits he sees is that it takes politics out of some of these issues and places a quasi-judicial Board in charge of granting these conditional use permits.

Chair Russell Slack stated she agrees with the Mayor. She recalled an application that was difficult to vote on but the matter did not have to go before the Zoning Board. She stated she agrees with the conditional use permit waiver.

A motion was made by Mayor George Hansel to amend draft ordinance in a way that is consistent with the staff recommended change. The motion was seconded by Emily Lavigne-Bernier and carried on a unanimous vote.

Councilor Bosley recommended striking the language regarding the waiver for the Planning Board. She indicated if this language is left in regarding the waiver insider this packaged ordinance with all these other changes, and it gets sent to Council and Council doesn’t agree this is a good course of action, the entire ordinance would fail. Hence, she stated her recommendation would be to amend the ordinance to remove this language and have staff bring a separate ordinance and see how it stands on its own merits.

A motion was made by Councilor Bosley to amend the ordinance to remove the waiver for the Planning Board. The motion was seconded by Councilor Giacomo. The motion failed on a 4-7 vote with Councilors Bosley, Ormerod, Johnson and Giacomo voting in favor.

A motion was made by Mayor George Hansel that the Planning Board find the proposed amendments by staff consistent with the Comprehensive Master Plan. The motion was seconded by David Orgaz and carried on a unanimous vote.

A motion was made by Councilor Kate Bosley that the PLD Committee request the Mayor schedule a public hearing on Ordinance O-2022-19-A. The motion was seconded by Councilor Michael Giacomo and was unanimously approved.

IV) Housing Needs Analysis Project

Ms. Brunner addressed the Committee again and began by stating that the next time this item is discussed in March the consultants will be joining the session remotely and will attend in person for the April meeting.

What is a Housing Needs Assessment, and why do we need one? A housing needs assessment is a data driven report to evaluate what housing is needed today and what housing will be needed in the future. It involves compiling and evaluating demographic data, economic trends, current housing inventory and characteristics, housing market conditions, stakeholder input. Then performing a detailed analysis of the data and then breaking it down into categories. Ms. Brunner noted this is just an informational report which will hopefully help with informed decision making.

The consultant for this project is Camoin Associates and the project is being funded by the Invest NH Housing and Opportunity Planning and Zoning grant.

There is also a regional housing assessment that is happening which started about a year ago and is expected to wrap up in March. Keene is collaborating with Southwest Region Planning Commission to make sure the messaging is consistent and are complementing their work. Keene is also sharing the Commission's efforts such as data sharing, regional wide survey and Keene is trying to build off that. Ms. Brunner stated one key difference is because the regional data was done about a year ago it is using ACS one year data, but the five-year data just came out which is much more robust data.

Councilor Giacomo asked whether this data will be used for trend analysis and stated he would like to see what the data looked like five years ago. Ms. Brunner stated the City does have one year data and have asked the consultant to compare to see whether the picture would be completely different to what the regional analysis looks like and to compare the two different data sets (one year versus five years).

Ms. Brunner then went over the schedule: This project started in late October with a project kick off meeting and staff has been meeting with the consultant every other week.

The consultant has been participating in stakeholder interviews in the community. A survey was recently launched which is available at keenenh.gov. There is a workshop being scheduled for February 7 at 6pm at Heberton Hall. This would be a presentation followed by an interactive event. The consultant will join the March session remotely, and they will attend the Joint session in person for the April meeting with their final report.

Engagement and Outreach:

There will be ten stakeholder interviews. A Housing Resilience Survey was just launched and will run through mid-February. There will be Community Housing Workshop on Tuesday, February 7, 6:00 pm at Heberton Hall Keene Public Library. Because of the Invest NH grant the City gets three spots at the UNH Housing Academy (mix of in person and online training) regarding messaging and understanding data behind housing. Councilor Ormerod, Chair Slack and a staff person will be attending this training.

Councilor Ormerod stated he did not hear about housing strategy. Ms. Brunner stated this would be a large part of what the final report would be. The Councilor noted the free market is keeping a lot of people out of housing and asked whether any of those strategies involve regulatory solutions. Ms. Brunner stated the strategies look at the entire picture and some could certainly be geared toward regulatory changes or zoning changes but it will go beyond that as well; public/private partnership, homeowner incentives, developer incentives, what housing is high risk etc.

Councilor Giacomo stated he has seen a rise in short term rentals; some of these landowners don't live locally and asked if this is this being captured in the data. This does not help the housing stock. Ms. Brunner stated this is something the consultant was asked to look at; is it a local landlord? is the housing a short-term rental? how many of these units are in Keene? The consultant is also focusing their review on towns surrounding Keene to obtain a regional picture.

Mr. Farrington asked whether the consultant would have a toolkit of strategies they could use in Keene which has been used elsewhere, which could be use sooner rather than later.

V) Rural District Discussion

Mr. Rounds addressed the Committee next. Mr. Rounds stated what staff is looking for is feedback regarding the change from five acres to two minimum lot size in the rural district to increase opportunity for development (5-2). There has been a lot of discussion and feedback on this topic and was hoping for added feedback from this Committee and staff has some alternative ideas they would also like to share.

Councilor Giacomo stated the one thing that stood out for him is the tax impact; if a parcel can be subdivided this would increase the tax impact on that parcel. He added this is not because of anything a landowner did to improve their property but a change being proposed by the City. Mr. Rounds stated staff has requested the Assessor to come before the Joint Committee and review this topic.

Councilor Bosley stated the tax impact was her number one issue as well and seems opposite to what the Committee is trying to accomplish. She stated she had met with the Assessor who had indicated the taxes would in fact go up but then went on to explain how assessing looks at properties and in some instances, there is the possibility that this change could decrease property value. It is not a simple answer and a thorough explanation from the Assessor would be helpful.

Mr. Rounds went on with his presentation. He indicated Keene has a housing crisis and the 5-2 change is something Keene feels can be one of the solutions. Another change staff also proposed is a change to the subdivision regulations, not necessarily changing what the subdivision regulations say but how it is said.

The other option – when this matter was originally proposed it was realized that 58% of the lots in the rural district are sub-standard (less than five acres) which means they cannot be developed easily. Some of those lots do have buildings located on them, if there was a change to be made to that lot a variance would be required. The proposed change would allow for those sub-standard lots to become legal conforming lots. Another way to make this change would be to rezone many of those sub standards parcels as possible, which Mr. Rounds indicated could be a long process and would only address lots outside the area that are developed differently and still leave some lots as non-conforming.

Mr. Rounds stated the last option staff has discussed is referred to as Transferable Development Credits (permitted under State RSA). The idea behind this option is that some lots in the Rural District have development potential and they could sell that portion in the open market to a different property (in a different district within the City) to increase density. Mr. Rounds stated this option does not work in every community as it can be complicated and has to be properly targeted to address the issue being addressed. Councilor Giacomo asked what the tradeoff would be; would that land be turned into conservation land. Mr. Rounds stated this is left pretty open in the RSA. Mr. Rounds stated the way he has seen it done in other communities is, the development potential is removed and replaced by a conservation easement held by a third party. Mr. Rounds stressed this might not work for every community and added the City will stay out of buyer seller market completely. What would need to be determined is what we are trying to save and what we are trying to develop in another location.

Councilor Johnson asked when a property is subdivided and a house is built but the house is owned by someone other than the owner of the original lot, whether the new owner of the new house be the one paying taxes. Mr. Rounds explained if a property is subdivided and a new house is built on the subdivided lot, the landowner could retain ownership of both lots and rent out the newly constructed house. In an instance like that, the landowner would end up being the one paying taxes on that property. However, if the subdivided lot is sold the new owner would be the one responsible for the taxes.

Councilor Giacomo referred to the 58% of properties that are substandard in the rural district and asked whether a variance could be applied to a substandard property to construct a new building. Mr. Rogers stated if it is an already developed non-conforming lot (a single-family house is already located on it) – as long as they meet other zoning requirement, such as setback,

lot coverage etc. it will be allowed. If it is a vacant lot and is non-conforming a variance to construct a single family home will be required.

Mr. Rounds referred to a comment received from the public comment portion: the proposed change would increase density in a low-density district – Mr. Rounds explained this district had much lower minimum lot sizes throughout its history. It was not until the 70's that the rural district minimum lot size was increased to address rampant development across the City and the City was concerned about overwhelming the facilities; lot size was increased to slow development down. However, now the City is in a situation where it wants to encourage development and return the Rural District to what it was prior to that change.

In terms of environmental impacts, there was concern there would be impact to things that are protected in the rural district such as its views, undeveloped pieces of land, surface waters, steep slopes etc. There are regulations that are currently in place to protect these things in the rural district which are not in existence in the more densely populated areas. Mr. Rounds stated these proposed changes won't affect those things as they exist now.

Mr. Rounds went on to say the general rule of thumb is that vacancy rate for rentals should be at 5% but Keene is at .5% which is an issue. Owner occupied units should be at 2% and Keene is well below this amount as well. There is not much that can be done to reduce these numbers unless there is available housing. Chair Russell Slack asked how much development has occurred in Keene in the last two years for housing and apartments. Ms. Brunner stated the consultant had asked for a list of development that has occurred in the last three years which had ten or more units – that number was zero. However, recently there is some development that has been conditionally approved which seems to indicate that the trend might be shifting slightly. The Chair asked staff whether they know how many housing units Keene would need. Ms. Brunner stated the report from the consultant that comes out in April would have that number.

Mayor Hansel stated he was on the Statewide Housing Stability Council which kicked off the localization of the housing discussion and at that time the State was short approximately 20,000 units; this was prior to Covid and since then the number has increased. The Mayor stated he feels bad that staff has to defend bringing this issue forward as it is a controversial topic. He felt this item (5-2) needs to be brought before Council to be voted up or down. He hoped staff would continue to give the community the opportunity to see if it wants to handle this housing crisis.

Councilor Johnson asked how Keene can include into this issue surrounding towns which might have the answer for this problem; do they handle their own issue and Keene handles its own issues. Mr. Rounds stated Keene does participate in the Regional Planning Commission which allows for much discussion with Keene's neighbors. However, when it comes to regulatory sharing there is not really a mechanism. He added the entire region needs to increase housing.

Chair Russell Slack asked staff when Keene did its housing analysis, whether it reached out to other towns. Ms. Brunner stated that analysis looked at market data and housing data for the

surrounding towns. The Southwest Region Planning Commission is doing a regional housing assessment and in that analysis there is an item referred to as fair share analysis – a statewide consultant has been hired to complete this work. What this would do is look at a fair number each community should be striving for.

Councilor Giacomo asked how granular the data is when it comes to things like house size etc. He referred to houses in the north central area of Keene which has fairly large houses which are owner occupied and the owners are aging and could be looking at downsizing which the Councilor felt could impact the housing market. He asked whether the study looks at square footage. Mr. Rounds stated the survey does ask about house size, as well as age of occupants which will be used for the housing needs analysis. Ms. Brunner referred to the consultant's scope of work and referred to the different market segments they would be using. They are as follows:

- Under-housed individuals (people who are living with parents, room-mates, because they can't find housing that meets their needs).
- Population Growth (household formation, attraction of remote workers)
- Economic Job Growth (attracting more workers to the area)
- Cost Burdened Households (spending more than 30% of their income on housing expenses)
- Displaced Commuters (commuting to the City from further away because they can't find suitable housing closer)
- Mismatched Households (individuals in housing they can afford and in location they prefer but does not align with other reasons such as renting versus owning)
- Households Living in Sub-Standard Housing (Lacking appropriate utilities such as proper plumbing etc.)
- Empty Nester or Senior Household (downsized units or units that require care and services)

Councilor Bosley stated what Councilor Giacomo said reminded her of her mother-in-law who would love to move from the home she raised her family in to a one-story house close to the rail trail, where perhaps someone could help take care of her lawn; but that type of housing does not exist in Keene. She agreed there are people who are aging in these big houses but they have no place to move to. She indicated the City needs to look at through its Code writing how it can create some of these different styles of developments to happen in this community, not just for wealthy out of towners who want to work from home but people who live here already.

The Councilor also talked about young people being able to purchase a home in this community. She felt what has happened in the last two to three years is obnoxious. The Councilor stated one of the things she had asked for with this housing analysis is data on Covid migration. Councilor Bosley felt the 5-2 proposal needs to have its own review to see if this is what is needed for the community. She felt each zone needs to be reviewed to see what can be done.

This concluded the presentation.

VI) New Business

None

VII) Next Meeting – February 13, 2023

VIII) Adjourn

There being no further business, Chair Russell Slack adjourned the meeting at 8:10 PM.

Respectfully submitted by,
Krishni Pahl, Minute Taker

Reviewed and edited by,
Mari Brunner, Senior Planner