

Supplemental Staff Report – Ordinance O-2016-01

Joint Committee Workshop June 13, 2016 – Focus: Neighborhood Preservation District

INTRODUCTION

This third staff report explores the specific aspects of the proposed Residential Preservation (RP) District for the Marlboro Street Rezoning Project on which the Joint Committee has requested more information:

1. Legally Pre-Existing Non-Conforming Uses and Buildings
2. “No More than Four”
3. The Potential removal of Dunbar and Water Street Parcels,
4. The Potential inclusion of two-family structures, and
5. Proposed Dimensional Recommendations

Please refer to Attachment #1 for the current language of O-2016-01 “Division 21 – Residential Preservation District.”

Legally Pre-Existing Non-Conforming Uses and Buildings

While the recommended change from High Density and Industrial Zoning Districts to a Residential Preservation Zoning District can have an effect on the future uses of parcels, both state statutes and local ordinances provide some protection for existing uses. New Hampshire RSA 674:19 states that when a zoning ordinance is amended or adopted it “shall not apply to existing structures or to the existing use of any building. It shall apply to any alteration of a building for use for a purpose or in a manner which is substantially different from the use to which it was put before alteration.”

<http://www.gencourt.state.nh.us/rsa/html/LXIV/674/674-19.htm>. Additionally, Keene’s Zoning Article III includes a range of provisions that provide protection to such property owners and guidance to the Zoning Board of Adjustment on issues of “Nonconforming Buildings, Structures and Uses” regarding new structures, abandonment, dwelling units, rebuilding or restoration, discontinuance (of a use), changes to nonconforming uses, alteration or expansion of a nonconforming structure, enlargement of nonconforming uses and time limits.

To explain, when a building or use was legally created prior to the adoption of the zoning ordinance or was legally created in conformance with the existing zoning ordinance and then the zoning ordinance is created or amended in such a way as to make the use or the building non-conforming with the new zoning standards, it is said to become a “legally-existing, non-conforming use or building.” When this happens, the land owner retains certain vested rights to continue the non-conforming use or to continue to use the non-conforming building. These rights are protected by both statute and local ordinances as mentioned earlier. Typically, the landowner whose property has a legally-existing, non-conforming use or building may only expand the non-conforming use or building to the extent that the zoning ordinance expressly allows such expansion of the nonconformity and typically the ordinance will allow expansion as long as the expansion does not make the use or building more nonconforming. An example of this is when there is a change in the dimensional standards that increases the building setbacks to the property line that results in placing

the building within the setback. The property owner could typically expand the part of the building that is not in the setback, but could not expand the building further into the setback. Another example would be if the minimum lot size for a building lot in the district is increased and there are existing buildings on existing legal lots that would become non-conforming due to the change in minimum lot size. Sometimes a change that will reduce or eliminate a landowner’s rights would be done with an effective date at some point in the future so that land owners would have time to subdivide, expand or make changes under the original regulation before the changes went into effect. Any new changes that were made under the original ordinance prior to the effective date would become legally-existing non-conforming lots after the effective date.

With regard to the committee’s concern that mortgage lenders could possibly view a non-conforming property negatively, a recent staff conversation with a local, commercial lender established that this bank has no additional fee for dealing with non-conforming properties and has no policy for these properties being dealt with uniquely due to this status. The representative also had not heard of other banks having any specific concerns on the subject of non-conformance.

“No More Than Four”

A question was asked by Council Chadbourne of the origin of the phrase “no more than four unrelated persons” when referring to limits on the number of people allowed living in a single-family dwelling. Article I, Section 102-2 of Keene’s Zoning Code - Definitions states:

“Family means 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.”

A recent conversation with Keene’s Plans Examiner (Code Enforcement) identified that the only “four unrelated persons” reference in Keene’s municipal zoning code is in the definitions of Lodginghouse, Sec. 102-2. – Definitions.

The Potential Removal of Parcels of Dunbar and Water Streets

As discussed during the May 5th Joint Workshop, the existing buildings along Dunbar Street and the north side of Water Street are primarily multiple-tenant (with the exception of one, single family residence on each of Dunbar and Water Streets), rental buildings, see graphic on the next page. Given the proximity of these buildings to the Keene State College (KSC) campus and downtown businesses, it is highly unlikely that these



buildings will change their function in the next several decades.

If this block of buildings (Main Street to Crossfield Street) were removed from the proposed Residential Preservation Zoning District, they would remain in their current High Density Zoning District. They could function as a “buffer”, in this capacity, between the proposed Residential Preservation Zoning District to the south and the Central Business as well as Central Business Limited Zoning Districts to the north, east and west of this block.

Dunbar Street Parcels



19 Dunbar Street
4-8 Unit Apartments – 8,494 SF Lot



31 Dunbar Street
Three-Family - 3,484 SF Lot



41 -45 Dunbar Street
4-8 Unit Apartment – 11,325 SF Lot



57 Dunbar Street
5-Unit used as 4-Unit, 8,712 SF Lot



65 Dunbar Street
Two-Family – 8,276 SF Lot

North Side of Water Street



26 Water Street – Boarding House



32 Water St. – Keene Housing Author.



42 Water Street - Single Family



48 Water Street – Three Family



54-56 & 60 Water Street – Two & Single Family



68 Water Street – Three Family

Staff recommends removing the block of buildings between Main Street, Crossfield Street, Dunbar Street and Water Street from the proposed Residential Preservation Zoning District to remain in their current High Density Zoning District.

The Potential Inclusion of Two-Family Dwellings

The committee requested staff research the ability of the City to require two-family dwelling units to be owner-occupied. Keene currently utilizes this provision for its existing Accessory Dwelling Unit regulation. The requirement is an affidavit submitted with the property record. Sec. 102-896.2 states:

“The record property owner shall occupy either the primary dwelling unit... as his or her primary residence (hereinafter "owner occupancy"). The property owner shall submit an affidavit... stating under oath that he or she satisfies the owner occupancy requirement of this subsection...”

The Town of Peterborough, however, requires an affidavit as a precursor to receiving a Certificate of Occupancy for new two-family dwellings. Keene could follow the lead of the new ADU law, which allows municipalities to require owner occupancy of one of the units. This could be done through an annual permitting program, through which the property owner would certify (under penalty of perjury and subject to \$275/day fines) that s/he will continue to occupy one of the units as his/her primary dwelling unit (meaning, approx. 163 days/year). Adding two-family dwellings as an approved use to the proposed Residential Preservation Zoning District would acknowledge the 57 existing two-family dwellings as well as allow the creation of additional two-family dwellings.

Staff will continue to research whether it is reasonable to enforce owner-occupancy as an annual permit or if there is another type of owner-occupancy requirement that is currently being used elsewhere in NH with success.

Proposed Dimensional Recommendations

Dimensional standards shape spaces between buildings by controlling their distances to one another as well as each building's distance to the parcel's property lines. The impacts of changes to dimensional standards were illustrated by The Cecil Project Team with Figure 1.

Dimensional standards determine the character and even aesthetics of a zoning district by regulating the density of buildings to open area. In the case of the proposed Residential Preservation District, low building heights, fairly spacious setbacks and conservative lot coverages would create a fairly spacious configuration of buildings to open space. Staff is proposing the following dimensional standards for the Residential Preservation Zoning District (see Table 1):

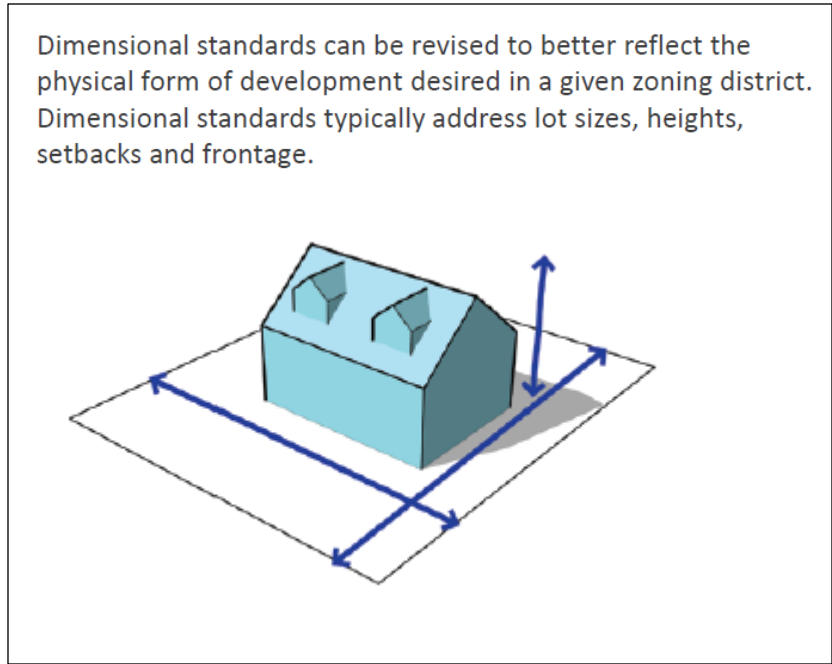


Figure 1: Dimensional Standards Illustration

- 2-Story Maximum Building Height would assure that all new buildings are visually consistent with the remaining pockets of traditional, residential, 2-story residences.
- 8,000 SF Minimum Lot Size would prevent the vast majority (all but 12 of the 181 parcels) from being subdivided into two lots, preserving the community's expressed desire for a traditional neighborhood "feel" and spatial arrangement similar to a "Low Density" Zoning District. Currently 88 of the 180 parcels are 8,000 SF or less so these lots' size would become legally nonconforming for size.
- 5,400 SF Minimum Lot Size per Dwelling Unit would limit the number of dwelling units to one unless the property is 10,800 SF or greater (5,400 SF for each). Fifty-one parcels do currently exceed 10,800 SF however nine of these properties are partially or wholly within the EPA-designated Floodplain which limits a property-owner's ability to develop that area of the parcel; see these highlighted parcels in the Figure 2.

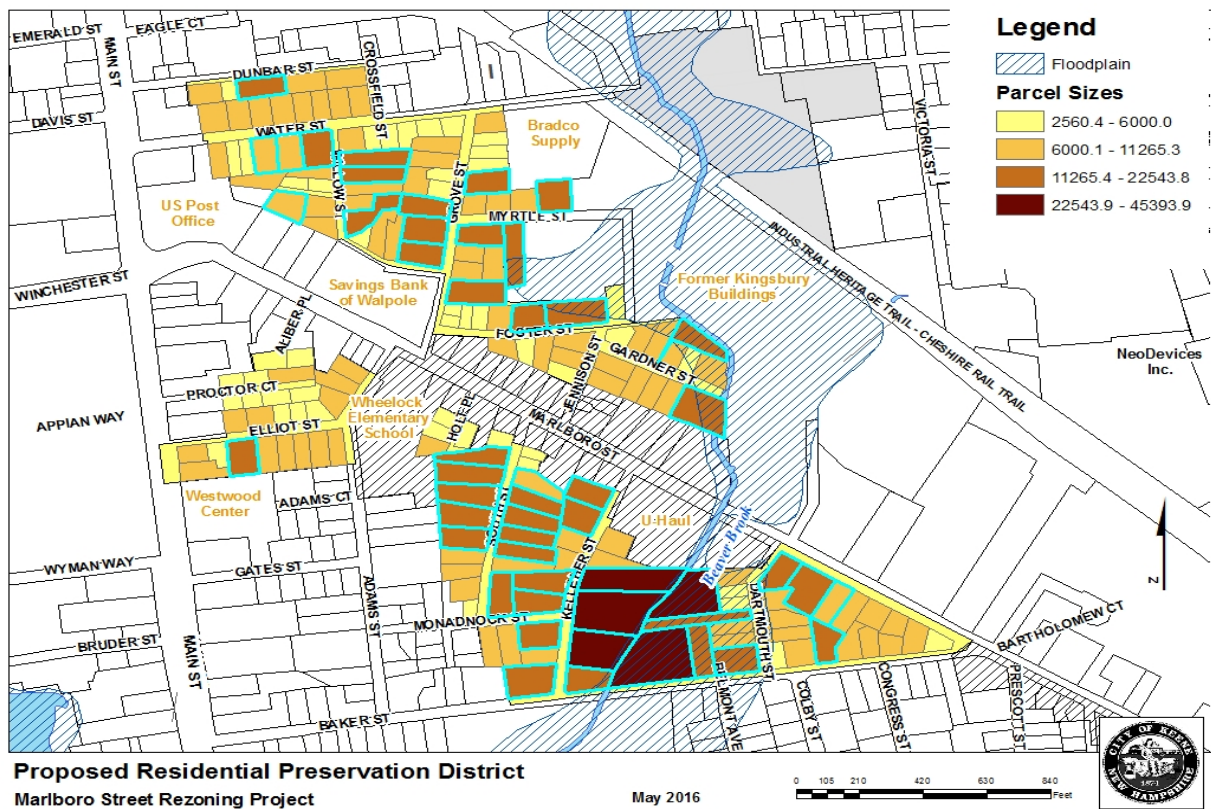


Figure 2: Proposed Residential Preservation Parcels - Highlighted are > 10,800 SF

- 45% - Maximum % of Lot Impermeable & 55% - Minimum % Green/Open Space

These proposed percentages acknowledge not only the desired aesthetic of “permeable or open/greenspace” between buildings but also the location of this zoning district within the lowest part of the Beaver Brook Watershed, a severely flood-prone area. Both existing and future unpaved and green or open areas allow the possibility of property owners to create “green infrastructure” on their properties, for example, grassy swales and rain gardens. In the right circumstances, these two green infrastructure tools are economically reasonable ways for individual property owners to temporarily hold stormwater away from their structures, potentially reducing the impacts of increasingly dramatic storm events.

- 45% - Maximum % Occupied by Structure

This standard regards the density of buildings to one another on a parcel. For example, if a property owner has an 8,000 SF lot the proposed 45% “Maximum % Occupied by Structure” requirement would mean that 3,600 SF could be occupied by a residence/building and/or other outbuildings without having to apply for a zoning variance. As an example, one existing 5,663 SF lot has a 2-story building that covers 1,061 SF with an aging, small garage of 264 SF. This means that this parcel is currently 23% occupied by structures. Under the proposed standard, this particular property owner could rebuild a much larger garage, just over 900 SF (15’ x 60’) before exceeding the proposed standard.

Staff recommends accepting these proposed Residential Preservation District Dimensional Standards shown below in Table 1.

ZONING DISTRICTS	MAXIMUM BUILDING HEIGHT - STORIES	MINIMUM LOT SIZE	MINIMUM LOT SIZE PER DWELLING UNIT	MINIMUM LOT WIDTH AT BUILDING LINE	MINIMUM SETBACKS; BUILDINGS	MAXIMUM % OCCUPIED BY STRUCTURE	MAXIMUM % OF LOT IMPERMEABLE	MINIMUM % GREEN/OPEN SPACE
High Density (Existing)	2	6,000 SF	5,000 SF	50'	15' Front	55	75	25
					10' Side			
					15' Rear			
Medium Density (Existing)	2	8,000 SF	5,400 SF	60'	15' Front	45	60	40
					10' Side			
					15' Rear			
Residential Preservation (Proposed)	2	8,000 SF	5,400 SF	60'	15' Front	35	45	55
					10' Side			
					20' Rear			
Low Density (Existing)	2	10,000 SF	10,000 SF	70'	15' Front	35	45	55
					10' Side			
					20' Rear			

Table 1: Proposed Residential Preservation Dimensional Regulations

Next Meeting

With the exception of the legal practicality of requiring owner occupancy for two-family dwellings, should the committee be satisfied that the Residential Preservation Zoning District is complete, the next Joint Workshop will evaluate the other comments taken at the April 11th and May 5th Joint Workshops regarding the:

1. Business Growth and Reuse District:
 - a. Issue of use sizes, e.g. square feet limits, and the
 - b. Issue of the inclusion of institutional uses.

2. Neighborhood Business District:
 - a. Issue of parking locations, and the
 - b. Issue of potential overlap between NB and BGR, making sure to allow smaller businesses to support the Ice Arena.
 - c. Definitions: a “Bar” or a “Restaurant”.

Recommendation

- A. Continue the public workshop for O-2016-01 and O-2016-02.
- B. If the committee is inclined to agree, the following revisions to O-2016-01 are recommended:
 - a. O-2016-01: The proposed Residential Preservation District Dimensional Standards, Table 1.
 - b. O-2016-02: The removal of the block of buildings surrounded by Main Street, Dunbar Street, Crossfield Street Water Street from the proposed Residential Preservation District.

Attachments:

- Marlboro Zoning Ordinance O-2016-01
- Existing Dwelling Uses within the Proposed Residential Preservation Zoning District Exhibit
- Proposed Residential Preservation District Exhibit