

**CITY OF KEENE
NEW HAMPSHIRE**

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

Monday, March 13, 2017

6:30 PM

Council Chambers

Planning Board Members Present

Gary Spykman, Chairman
Douglas Barrett, Vice-Chair
Andrew Bohannon
Mayor Kendall Lane
Councilor George Hansel
Martha Landry

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

Councilor David Richards, Chairman
Councilor Philip Jones
Councilor Bart Sapeta
Councilor George Hansel
Councilor Robert Sutherland

Planning Board Members Not Present

Nathaniel Stout
Chris Cusack
Pamela Russell-Slack
David Webb, Alternate
Tammy Adams, Alternate

**Planning, Licenses and Development
Committee Members Not Present**

Staff Present

Rhett Lamb, Assistant City Manager / Planning
Director
Michele Chalice, Planner
Tara Kessler, Planer

1. Roll Call

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

2. February 13, 2017 meeting minutes

A motion was made by Mayor Kendall Lane that the Joint Committee accept the February 13, 2017 meeting minutes. The motion was seconded by Councilor Philip Jones and was unanimously approved.

3. Continued Public Workshop

Ordinances - O-2016-01 and O-2016-02 – Relating to Zoning Changes. Petitioner, City of Keene Planning Department, requests the creation of three zoning districts; a Business Growth and Reuse District, a Neighborhood Business District and a Residential Preservation District and the associated zoning map changes. The two hundred and fifty-six parcels of land affected by this request total an area of 266 acres. The project area is generally east of Main Street, south of Water Street, west of Eastern Avenue and north of Baker Street. A summary of proposed revisions to the original ordinances will be discussed.

Planner Michele Chalice began by saying that the Committee only has two potential map changes left as well as some zoning issues to look at today; (1) “Repair Garage” in the Business Growth and Re-Use District, (2) the implications for adding “Institutional Use” in the Business Growth and Re-Use District (BGR) and the Neighborhood Business District (NB) and the (3) approval of the ordinances.

“Repair Garage” – This is a use that has a condition even in the existing Industrial District. Chair Spykman asked whether there was any district in the City where a “Repair Garage” use is permitted without a condition. Ms. Chalice answered in the affirmative and added the only other district that permits “Repair Garage/Paint Shop” is Commerce and this has a condition as well. Ms. Chalice added if this condition is met, i.e., if the use is screened, this use is proposed to be able to happen anywhere in the BGR District. She noted this is not a use that was considered during the Marlboro Street Re-Zoning Project. However, the concern prioritized by the committee during the Marlboro Street Re-Zoning Project was this concept of a “walkable community” and felt a resident being able to walk to a place to have their vehicle repaired would be consistent.

The alternative would be to allow this use with a Special Exception, but this would be a different process and an applicant would have to go before the Zoning Board of Adjustment for a Special Exception. Ms. Chalice referred to the following criteria the Zoning Board would take into consideration:

(a) The zoning board of adjustment shall have the power to hear and decide Special Exceptions to the terms of this chapter and, in doing so, may grant approval in appropriate cases and subject to appropriate conditions and safeguards for the protection of the public health, safety and welfare. Special Exceptions may be approved if the board finds that:

(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.

Chair Richards asked for the dimensional requirements for a “Repair Garage.” Ms. Chalice stated there are no dimensional requirements, but referred to the following definition for a “Repair Garage”: *means a building or structure or part thereof or any premises used for making major changes and adjustments to motor vehicles including structural changes or repairs, and including work involving the use of machinery.*

Councilor Sutherland stated there has always been an effort to get rid of car dealership type uses out of this area and to encourage Residential on one side and variety of other uses on the opposite side. He felt what the Committee should be looking at is BGR with Special Exception or Central Business with Special Exception.

Mayor Lane stated the attempt to reduce car dealerships on Marlboro Street, which happened in the 70’s, was to reduce the congestion on Marlboro Street and this applied to any automobile use that caused congestion on this street. He stated one of the concerns he has is the regulations Keene places on small businesses which makes it difficult for them to exist in this community. He felt the regulatory oversight being placed on these small businesses were meant for larger businesses and came in because of the Konover Mall. The Mayor stated what needs to be thought of is how we encourage small businesses and how do we discourage small business. If the attempt is to discourage small business they could then be required to go before multiple bodies. However, if the desire is to encourage small business, then put in place a requirement for that not happen.

Councilor Sapeta asked whether the “Repair Garage” is a use that should be looked at from a longer perspective than five or ten years as this is an industry that is innovative and the City could be looking at inviting a forward-looking, cleaner industry.

Mr. Lamb stated there are two businesses that currently fall under this category; they can still stay at their location but would be non-conforming. Ms. Chalice added staff’s recommendation is to utilize the condition as it was utilized in Industrial to make sure the visual aspect is completely contained, should this use happen.

Mayor Lane asked in the Industrial Zone where the two automobile repair shops currently exist whether they were conforming uses. Ms. Chalice stated she was not quite sure but noted Tom’s Auto does have screening around their site but felt this is something the Zoning Administrator will need to verify. Chair Spykman stated landscaping has been added around Tom’s Auto makes this site conforming and it would be the same with Victoria Street.

Councilor Sutherland felt residences might not mind a “Repair Garage” but could object to a “Paint Shop” because of issues with fumes, etc. Ms. Chalice stated the Committee does not have to permit a paint shop, it can specify what it would like. Chair Spykman stated that there was an automobile/paint shop the City approved on Winchester Street recently which has substantial filtering and noise reduction equipment and felt auto garages can be a clean business.

Ms. Landry asked whether a change of ownership would affect a use. Ms. Chalice stated it would not, even with a Special Exception as long as the use stays consistent.

Councilor Hansel stated he was trying to figure out what was less onerous to an applicant; Industrial and having a condition or having to require a Special Exception. Ms. Chalice stated requiring a Special Exception would cause a project and applicant to go before the Zoning Board of Adjustment.

Councilor Jones stated he agrees with what the Mayor stated and felt otherwise we would be handing over car repairs to big businesses like Sullivan Tire and Midas who can afford developers. Vice-Chair Barrett stated over the years he has visited repair shops located in various neighborhoods, even some located in Residential areas and did not see them having a negative impact in any of those areas.

Vice-Chair Barrett stated he did not see a problem including this use in BGR with the same condition that exists right now in the Industrial district. Chair Spykman asked whether anyone on the Board has an objection to this. The Committee did not.

Ms. Chalice referred to page 16 of the staff report which shows a red building – Tom’s Auto. This owner has two parcels on Water Street. These parcels are surrounded by Central Business on the north, west, and east, and surrounded by the proposed Residential Preservation District on the south. She added garage business is the notion of storage which use is allowed in Commerce, whereas “Repair Garage” is conditionally allowed in Industrial. Staff feels this would be an appropriate use in BGR. Ms. Chalice referred to use comparisons on page 28.

Councilor Sapeta asked how the owner has reacted to this zoning change. Ms. Chalice stated the owner is not particularly interested in any zoning changes because it would make his site non-conforming.

The Committee agreed these two parcels should be located in the Business Growth and Re-Use District.

This concluded the zoning changes for Ordinance 0-2016-02.

Ms. Chalice then referred to “Institutional Uses” being included in the BGR as well as Neighborhood Business. Currently Sec. 102-1112 of the City of Keene’s Zoning Code states:

A Special Exception is required to change to a different “Institutional Use” or to add another “Institutional Use” other than in the central business (CB), central business limited (CBL), and Commerce (COM) zones – it is being suggested adding BGR and NB to this language.

Councilor Hansel stated he wasn’t sure if he wanted “Institutional Uses” in BGR; his vision for this area is to bring small business and revitalize this area and build it up. Ms. Chalice noted this would only be allowed from Marlboro Street up to Eastern Avenue. Councilor Hansel stated this is the area he wants developers to be looking at and wanting to develop.

Councilor Sutherland added Neighborhood Business (NB) also has restrictions as it relates to parking and felt “Institutional Use” would hence not bode well in this district either based just on the restrictions. Ms. Chalice stated another provision which would need to be addressed is the doubling of the side and rear setbacks when an “Institutional Use” happens immediately adjacent to a Residential use. She referred to a map and noted in the NB District and the BGR District there are areas immediately adjacent to the Residential Preservation (RP) parcels.

Chair Jones stated he did not feel there would be sufficient room to build anything related to Neighborhood Business in this small area of land, which would be “Institutional Use” and stated he too agrees with Councilor Hansel that we would like to get BGR in this area. Ms. Chalice noted there are certain Institutional use’s that can be small, such as the Waldorf School.

Councilor Sapeta noted there are also a college use, senior center and place worship also included in this. Mr. Lamb stated there is no proposal to change the definition of “Institutional Use” which would be a

bigger task rather than adding it to a proposed zoning ordinance. Chair Spykman asked Mr. Lamb to explain how the “odd” “Institutional Use” system works in Keene. Mr. Lamb stated there was a time when “Institutional Use” was adequately regulated in Keene. There were churches popping up in Residential areas. Hence, the City set up a definition for Institutional which stated “Institutional Use” will be allowed by Special Exception in certain areas. This is why Section 102-1111 and -1112 includes a list of streets; Marlboro Street is on this list and is allowed here regardless of what the underlying zoning is.

Councilor Jones stated his thought is this change would provide for some standard for “Institutional Use” to happen in a certain portions in the City where over-lapping uses take place; it would already be a defined area. Mr. Lamb stated the fundamental question is whether the Council is going to require it by Special Exception or not. Mayor Lane felt the Committee might be putting in place something that would be difficult to solve if it tries to solve the issue of “Institutional Uses” tonight. The Mayor felt the Central Business District could probably support “Institutional Use” on Marlboro Street and off Marlboro Street. He indicated he wants small businesses and wants to grow small businesses but doesn’t feel the same way about “Institutional Uses” and felt “Institutional Uses” that are non-profits need more control as to where they are located, how many of them exist, and what kind of impact they have on where they are located. He did not feel “Institutional Use” should be added to this ordinance.

The Committee agreed to leave “Institutional Uses” as they exist at the present time.

Review Ordinance as it exists with the revisions made to it since April – Ms. Chalice referred to the bottom of page 17 - O-2016-01 Committee and Staff Revisions to Date.

Councilor Sapeta asked why Bed and Breakfast in permitted in BGR, NB and RP. Ms. Chalice stated Bed and Breakfast was a recent add-on and the idea was to leverage the older homes in the community as the City doesn’t have the family size to support these older homes. Under the definitions there are two types of Bed and Breakfast that has been created – *Bed and Breakfast with dining meeting facilities* in NB is with Special Exception as well as in the RP because it is believed this would be a high density use and considerations need to be made for properties within this district. Whereas, *Bed and Breakfast inn/tourist home* is a permitted use by right in all three districts.

Councilor Hansel referred to page 24 – chart – column entitled *Max. Building. Height/Stories (w/ 1st Floor Parking)* – he noted – he likes the provision of permitting an extra floor because parking is being permitted on the first floor. He asked whether this is being done in any of the other zones. Ms. Chalice stated it is being done in NB and BGR. Ms. Chalice referred to page 21 – has the ability to go up an extra story if it is an energy efficient building from one of the four methodologies. The Councilor stated the way in which he is reading this – in NB if there is first floor parking and you get another story of occupancy, it is going from two to four stories rather than three to four stories as in the other zones. Ms. Chalice agreed this is an error she will need to correct.

The last line on the chart on page 21 should correctly read as: 2, 4, 3, and 5 (left to right). Ms. Chalice agreed and thanked Councilor Hansel for correcting the mistake.

Ms. Landry asked where motor vehicle “Repair Garage” will be incorporated. Ms. Chalice stated this will be added to the uses for BGR (page 20).

A motion was made by Mayor Kendall Lane that the Planning Board find Ordinance O-2016-01-A and O-2016-02-A are in compliance with the Comprehensive Master Plan. The motion was seconded by George Hansel and was unanimously approved.

A motion was made by David Richards that the Planning, Licenses and Development Committee recommend the Mayor set a public hearing on Ordinance O-2016-01-A and O-2016-02-A. The motion was seconded by George Hansel and was unanimously approved.

Ms. Chalice explained after the public hearing this matter will be referred back to the Planning, Licenses and Development Committee who will discuss the Ordinance with no public comment and recommend to Council whether or not to adopt the two ordinances. Subsequent to that the Council will vote on the two Ordinances.

4. Land Use Code Update Phase 1 – Discussion

Planner Tara Kessler addressed the Joint Committee and stated this is a continuance of a discussion that started in February as to how the city should move forward with Phase 2 of the Land Use Code Update Project. At the February meeting, it was recommended that staff come back with a comparison of Form Based Zoning in a NH community and Keene's Euclidean zoning. Ms. Kessler stated she wanted to preface her remarks by saying it is always difficult to compare zoning among communities and it will never be a direct comparison.

Ms. Kessler referred to a handout, which was included in the Joint Committee meeting packet, entitled "Zoning Map." This handout included a comparison of the Central Business District (CBD) in Dover, NH to Keene's CBD. Dover has approximately 30,000 residents versus Keene's 23,400. Dover's downtown is about 100 acres, whereas Keene's CBD is about 93 acres.

In 2009, Dover undertook an effort to develop Form Based Zoning in the downtown area. At the time, Dover's Planning Director wanted to highlight the things that made the downtown great. There was a visual preference survey done on what Dover residents would like to see in their downtown. They recognized that the existing zoning was not working for them and hence started looking at Form Based Zoning as one of their tools to guide development and redevelopment. Within their new CBD, which replaced a number of zoning districts, they developed sub-districts.

Ms. Kessler stated that Keene has 17 different zoning districts, and Dover has 19. Both communities have overlay districts that add another layer of regulations. Keene's downtown has four different overlay districts. When Dover implemented their CBD, they recognized their streetscape changed and they did not have a consistent look throughout their downtown. Therefore, they created the following sub-districts:

- Transient Oriented Design: Promotes a mixture of different types of modes transportation.
- Downtown Gateway: Main gateways leading into the downtown
- Residential
- Commercial
- Central Business District General

Ms. Kessler then talked about the Dimensional Standards created by Dover for their Form Based Zoning. These standards are presented on one page, which outlines the Statement of Purpose, Special Regulations and Dimensional Regulations. Within Keene's Regulations, you have to go through a number of sections to find the Dimensional Regulations, Table of Uses that are allowed, Intent of the District and to be able to pull out the appropriate standards.

Dover's Dimensional Regulations include a minimum and a maximum for certain setbacks and building height. They also have something called a Frontage Buildout, which Keene doesn't have. In the CBD General sub-district in Dover, the Frontage Buildout is a minimum of 70%. With reference to building heights, Keene regulates by maximum height (four stories in the CBD and six stories with special exception or 55 feet and 75 feet with special exception). In Dover, they have created a minimum and a maximum number of stories for buildings in the CBD, but there is no restriction on how high a building is as measured by feet. This ensures greater compatibility with surrounding buildings.

Within Dover's CBD the streetscape is also regulated. Some of the examples are listed under the sub-heading, Private Frontages, under Dimensional Requirements (common yard, porch/fence, and stoop).

They have also chosen very simple graphics for their CBD, which helps convey concepts easily.

Councilor Sutherland felt Keene's downtown would lose some of its uniqueness with Form Based Zoning and expressed concern over the restrictions property owners would face. He noted that even though Euclidean Zoning has some issues, is more open to interpretation and gives landowners options to do what they want with their properties. Ms. Kessler stated this is something the Land Use Code Update Steering Committee talked about and there was concern raised. In doing some research to learn more about Form Based Zoning, she noted there is opportunity to address the concern for lack of creativity by not including architectural standards. With Dover they started with architectural standards and through the review process, the vast majority of community members were not in favor of these standards. Hence, the requirement for architectural standards has been eliminated but they have been included as broad architectural standards and can be followed if developers chose to do so. Ms. Kessler agreed Keene is a unique community and does not wish to stifle creativity but in looking at Form Based Code what you are doing is regulating the form and massing of a building.

Councilor Hansel stated what he likes about Dover is the two-story minimum whereas in Keene on one side of the street there are single-story buildings, which do not necessarily fit in with what exists on the opposite side.

Ms. Kessler stated that Form Based Codes are more prescriptive compared to what Keene has, as they attempt to guide development more than what Keene has. In terms of simplifying the process, this is something we should have to make it easier to navigate and did not feel Form Based Code on its own would help streamline the process. This is something the City will have to be intentional about through the code rewrite.

Councilor Jones referred to the Gilbo Avenue Overlay Zoning District. He noted the City was going for streetscape improvements but did not want to dictate what went there either, and felt this resembles what the City did with Gilbo Avenue.

Mr. Lamb felt with any one of these mechanisms, the City is going to have use words such as "compatible" or be more prescriptive and dictate what the architectural appearance of a building should look like. The City leans more towards a general statement rather than a prescriptive statement with architecture. He felt if the City should choose Form Based Code they would need to make sure they are not being too prescriptive and ending up with "cookie cutter" buildings, but there needs to be something in the language about massing and keeping up with the surrounding buildings.

Ms. Kessler stated Dover is nearly as small as Keene is and when they were thinking about their architectural standards they were not only thinking about public resistance, but were also thinking about the development they would want in the next 20 years. They don't want to discourage development and be overly prescriptive with their architectural standards.

Ms. Kessler stated that Form Based Zoning addresses uses but there is less emphasis on uses than with Euclidean Zoning. Dover has reduced the number of uses being permitted by creating broader categories. Instead of allowing for special exceptions, they require a conditional use permit, which would be approved by the Planning Board. For residential uses in Dover's downtown the use is encouraged but not on the first floor, in order to retain the downtown feel of retail but also encourage mixed use. With reference to Keene's CBD, if a use is not listed on the table of allowable uses, and there was no special exception listed next to it, a variance is required. She noted that in Dover there have only been two instances when a proposed use in the CBD fell under the "other" category – a gas station and a Hooka Bar. The Hooka Bar was approved through a conditional use permit but the gas station was never built by the developer.

Ms. Kessler noted that Dover's Form Based Zoning addresses the public sphere and that most Form Based Zoning has this element. Ms. Kessler referred to some of these elements outlined in the document. These elements are unique to Dover and are not something incorporated in Keene's zoning ordinance. The elements incorporated by Dover for example are new street trees need to be planted at an average of 25 to 35 feet, unpaved areas would need to be covered with ground cover or shrubs, if there is sidewalk

impact they need to be constructed in concrete and has to be five feet wide, waste bins on every block. Ms. Kessler stated that Dover's Planning Director had mentioned the Public Works Department was not in favor of some of these standards as maintenance of these elements fall on the city. She added every community is different and this is not necessarily something Keene would have to do.

Dover also has ground floor standards, which specify the amount of glazing that would be applied to window coverage. In the CBD General Sub-district, 30% of façade need to be windows, and the pedestrian entrance needs to be at the front façade. They also encourage LEED Standards but these are not required. Keene's zoning does address parking, landscaping and architectural standards to some extent. Keene has a historic district in its downtown but Dover does not. Keene also has complete street design guidelines when new streets are constructed or when streets are rehabilitated.

Ms. Kessler went on to say from a process standpoint, Dover as well as Portsmouth, which has Form Based Zoning, does not preclude someone from having to go through a site plan review process. Mr. Lamb added this is different to what those who are working on the Land Use Code Update Steering Committee have learned about Form Based Zoning and felt it might have some impact on the Land Use Code Statutes and Legislation of the State. He felt this is something that needs to be researched. Chair Spykman stated his hope with this is there would be clear set of standards, which could eliminate the site plan review process for some minor projects. Mr. Lamb agreed that more research needs to go into this.

Councilor Hansel stated he is surprised that Dover can get developers to pay for trash cans and felt this is something Keene can point out to people when Keene is accused of not being developer friendly. Ms. Kessler stated in discussing some of these issue with the Dover's Planning Director he had indicated, they have been told Dover is too development friendly and Ms. Kessler compared Dover's approval process to that of Keene. Dover's site plan review and approval process takes about 60 days to go from conceptual review to approval but they have been able to streamline this through their re-zoning effort. In Keene, however, we are able to approve most developments in about 32 days.

Councilor Sapeta asked whether Keene should not advertise this 32 day approval timeline on the City's website to indicate we are very developer friendly.

Vice-Chair Barrett stated he was not clear when there was disagreement between the Dover's zoning staff and city staff about these regulations – when they were first approved in 2009 or whether this was on going issue. Ms. Kessler stated the Planning Director experienced resistance during the public hearing phases for the adoption of the new zoning. She is unsure of what types of resistance, if any, persist to this day with the new zoning. She plans on interviewing more people soon. Vice-Chair Barrett felt there is always initial resistance but after a period of time and after the reality is seen, people often have a different feeling. He felt both of these circumstances could happen with Keene as well.

Ms. Landry stated she would like to get more of a perspective from the community and asked whether Dover's zoning has been amended. She also asked whether the development activity in Dover has increased. Ms. Kessler felt it would be a good idea to interview more of the community. With reference to amendments, in 2009 it was more about the core downtown area, but in 2012 they expanded to the gateway corridors. With reference to how much the development has changed, the Planning Director feels there is definitely more development happening in the downtown since 2009 or previously, but wasn't sure how much of this was because of the Form Based Zoning or other issues. Ms. Landry asked whether Dover was also happy with the development result. Ms. Kessler answered in the affirmative and went on to say it would be helpful to get pictures to visually illustrate some of the newer development. Councilor Sapeta stated regardless of which way the City of Keene goes; the Visual Preference Survey is something the City should pursue. Chair Spykman stated it would be interesting to see if development has happened since 2009 if development has happened, if it was different to what has happened previously.

Councilor Hansel asked whether Ms. Kessler's plan was to address the subject of Unified Development Codes with the Committee. Ms. Kessler answered in the affirmative and added she did share Raleigh, North Carolina's Unified Development Code as well as the Buffalo's Unified Development Code in

previous handouts and memorandums. The Councilor asked what the ultimate recommendation would be from this Committee. Ms. Kessler stated ultimately it would be to decide which strategy would be best to achieve the city's goals for the Land Use Code Update Project – Phase 2. The strategies that have been recommended are the hybrid strategy, which involves keeping what we have in residential areas and adopting Form Based Zoning for the downtown and village centers. This strategy would also involve the cleaning up of inconsistencies in the existing regulations, and streamlining review process. The other recommendation is for the City to adopt a Uniform Development Code.

Chair Spykman asked of the six options the consultant provided, which one would Ms. Kessler say Dover adopted. Ms. Kessler stated Dover performed an audit of their regulations before adopting Form Based Zoning. They went with the hybrid approach, where Form Based Zoning is being adopted for the downtown but the rest of the city has conventional zoning. Currently, they are trying to consolidate their Planning Board Standards into one document for easy navigation.

Councilor Sutherland felt the areas Keene should be focusing on first are the areas where development is happening and is more likely to happen. These areas should be prioritized.

This concluded the presentation.

3. Adjourn

The meeting adjourned at 9:15 pm.

Respectfully submitted,
Krishni Pahl,
Minute Taker

Reviewed by Rhett Lamb, ACM/Planning Director
Edits, Lee Langella and Tara Kessler, Planner