

**CITY OF KEENE  
NEW HAMPSHIRE**

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

Monday, August 14, 2017

6:30 PM

Council Chambers

**Planning Board Members Present**

Gary Spykman, Chair  
Douglas Barrett, Vice-Chair  
Andrew Bohannon  
Mayor Kendall Lane  
Chris Cusack  
Councilor George Hansel

**Planning Board Members Not Present**

Nathaniel Stout  
Pamela Russell Slack  
Martha Landry  
Tammy Adams, Alternate  
David Webb, Alternate

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

Councilor David Richards, Chairman  
Councilor George Hansel  
Councilor Bart Sapeta

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

Councilor Robert Sutherland  
Councilor Philip Jones

**Staff Present**

Rhett Lamb, Planning Director  
Michele Chalice, Planner  
Tara Kessler, Planner

**1. Roll Call**

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

**2. June 12, 2017 meeting minutes**

A motion was made by Councilor George Hansel that the Joint Committee accept the June 12, 2017 meeting minutes. The motion was seconded by Councilor Bart Sapeta and was unanimously approved.

**3. Public Workshop**

A. **Ordinance – O-2017-10 Relating to a Zoning Change** – Petitioner, City of Keene, proposes to amend Section 102-896 of the Keene Zoning Ordinance to be consistent with changes made to NH RSA 674:72 regarding Accessory Dwelling Units (ADUs), which took into effect on June 1, 2017. The proposed Ordinance allows as a matter of right attached ADUs in the Rural, Agriculture, Office, Medium Density, High Density, High Density-1, Low Density, and Low Density-1 Districts and for detached ADUs in the Rural and Agricultural Districts.

Acting Health Director, John Rogers addressed the Joint Committee. He explained that Keene has had an Accessory Dwelling Unit (ADU) Section within its Zoning Code, which is in conflict with the changes recently made at the State level regarding the regulation of ADUs. The RSA indicates an ADU will be permitted in any area that permits a single family use, which the current Ordinance does not do. The other change the City has put in place is to take this out of the conditional use process before the Planning Board and bring it into a building permit requirement.

Another issue is that a municipality is not allowed to restrict the size of an ADU, which the city's current ordinance does. The state indicates it cannot be restricted to less than 750 square feet. The

City's ordinance requires a property to be lived in by the property owner; this is not being changed, this is still a requirement.

Planner, Tara Kessler then addressed the Staff Report for this item. She indicated that ADUs are currently permitted in nearly 72% of the community but are allowed as a matter of conditional use permit only in three zoning districts (Low Density, Low Density 1 and Rural), either as attached or detached. This new ordinance will increase the area of the City that allows for ADUs to 80%. While the existing ADU ordinance permits attached and detached in the Low Density Zoning District, this new ordinance will only allow for attached ADUs. This is to preserve the density of this district, which is intended to have only single family homes. Detached units will be allowed in Rural and Agricultural Zoning Districts only and there will be a size restriction of 1,000 square feet. The areas where detached ADUs will be allowed includes about 66% of the community.

In the High Density District, Medium Density District, and the Office District it is possible to build a second dwelling unit, however, the lot must meet the minimum lot size requirements. In the High Density District you will need a minimum of 11,000 square feet to allow for two dwelling units and the minimum lot size for one unit would be 6,000 square feet.

With respect to consistency with the Master Plan, it is clear about supporting home ownership and rental opportunities that provide well maintained, quality and safe housing for all portions of our demographics. It also encourages in-fill development and rehabilitation of existing housing stock.

Councilor Hansel asked how the City plans to enforce the owner occupancy requirement. Mr. Rogers stated there is wording in the ordinance that relates to this issue but the City has not done what the ordinance currently refers to and we are recommending that language be deleted. However, staff is recommending during the initial building permit process, a sworn statement from the property owner be required and that this also be made part of the deed.

Mr. Lamb clarified the City can also become aware of a violation by a complaint from a neighbor or an informed citizen. The Chair asked at such a time would the City be obligated to follow up. Mr. Rogers stated at a time like that it becomes a City ordinance violation and would be followed-up.

Mr. Barrett stated he understands the rationale for having a maximum size for an ADU but asked for rationale for the minimum size limit. Mr. Rogers stated his rationale is that you don't want someone taking two small closets for instance and turning it into dwelling.

Dr. Cusack referred to page 8 of 37 (map 3) and clarified detached ADU's are to be permitted in the rural and agricultural zones and asked whether they are also permitted in other zones as long as they meet the requirements. Mr. Rogers stated attached ADU's have to be permitted in a municipality as per State RSA. However, a detached ADU will only be permitted in the Rural or Agricultural Zoning Districts. Ms. Kessler added if you are in the High Density, Medium Density or Office Zoning Districts, you are permitted the second dwelling unit as long as you meet minimum lot size requirements of the zoning ordinance whether attached or detached. Dr. Cusack referred to page 9 referred to the second full paragraph which states "*...If a property owner in either the High Density, High Density 1, Medium Density, or Office Districts wanted to construct a detached ADU...*" and asked if we were not calling it that.

Councilor Sapeta asked how many ADUs have been built so far in the City since this ordinance was adopted in 2007. He indicated his concern is if this was something that increased in volume there

could be issues with parking, the number of units on a lot, water run-off and flooding. Mr. Rogers stated there have been only a handful of ADUs built so far and noted any ADU that is built has to meet all setback requirements, lot coverage requirements under the zoning ordinance.

Mr. Lamb stated the changes being proposed are to be consistent with state law. He said going forward this would all be done by right and not through a conditional use permit from the Planning Board.

The Chair asked for public comment next.

Mr. Peter Espiefs of 29 Middle Street stated he lives in the office district and his property is a historic home and asked how this proposal how this would affect his property. Mr. Lamb stated if there are changes to the exterior of a building which are visible from a public way they will be subject to historic district regulations and a permit might be required.

With no further comments, the Chair closed the public hearing

A motion was made by Councilor George Hansel that the Planning Board find Ordinance – O-2017-10-A consistent with the Comprehensive Master Plan. The motion was seconded by Andrew Bohannon and was unanimously approved.

A motion was made by Councilor David Richards that the Planning, Licenses and Development Committee request the Mayor set a public hearing for Ordinance – O-2017-10-A. The motion was seconded by Councilor George Hansel and was unanimously approved.

**B. Ordinance – O-2016-01-B** – Relating to Zone Change. 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. The proposed ordinance also revises eleven zoning definitions and creates five additional zoning definitions. 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 ordinance and to the Basic Zone Dimensional Requirements Table 1, Section 102-791 will be discussed.

Planner Michele Chalice addressed the Committee next. Ms. Chalice stated staff is before the Committee with the Marlboro Street project because they have a unique opportunity to make minor modifications to the text of the intent statement for two of the proposed districts. This would allow the City to use RSA 79-E, a temporary property tax relief program being considered by the Council.

It also gives staff the opportunity to clean up a few other structural inconsistencies: language requiring owner occupancy, permitted principal uses added to the Business Growth and Re-Use and Neighborhood Business Permitted Principle Uses table, the removal of proposed dimensional requirement tables from throughout the ordinance, which made it easier to understand during the review period, to the main, Basic Zone Dimensional Requirements Table.

**First Change:**

RSA 79E – Pages 25 and 32 – the only change being made is listed on the bottom of page 25 Division 22 - Business Growth and Re-Use District (BGR) Sec. 102-771.0 – (the change being proposed – the word “is” being removed and content added to read as follows: *The intent of this section is to create an additional downtown zoning district ...*

Page 32 - Division 23 - Neighborhood Business District (NB) Sec. 102-772.0 – new language reads as follows: *The intent of this section is to create an additional downtown zoning district...*

Mr. Lamb added the reason for this change is so that 79-E could apply in the instant City Council chooses to move forward with it.

Mayor Lane asked why it is being limited to the Business Growth and Reuse District and not in the Residential District which is being created. Ms. Chalice stated this is because the tax implications have not been discussed thoroughly enough. Chair Richards stated at the PLD Committee there was discussion about the Residential District also being included. Mr. Lamb stated it can always be added in today as an amended but noted at the PLD Committee level it was staff's recommendation that the City begin with an economic development focus rather than a housing or neighborhood focus. 79-E has an economic focus and not in the residential realm. The Mayor felt the City was not drafting the 79-E legislation today and all the City is doing is putting in language to make it possible for 79-E to happen in the future. The Mayor felt now that the City has 79-E in front of it they might use it in all three zones and did not feel the City should amend the ordinance later on for what could have been included now.

Councilor Sapeta agreed with the Mayor in that he felt the issue discussed earlier tonight with the ADU's could be included in this which will make it more economically viable. He asked if the Neighborhood Business District can only be applied downtown. Ms. Chalice stated the term "downtown" is being added is so that the new Neighborhood Business District being proposed can utilize 79-E. Chair Richards stated what is being suggested is that 79-E be utilized for the new zones being created. Councilor Sapeta stated his concern is that the language is confining Neighborhood Business District just to the downtown and can't happen in other areas of Keene.

Mayor Lane stated the RSA 79-E is limited to downtown and to the Downtown Revitalization District. He further stated the Downtown Revitalization Committee, who have been working separately since spring, has already defined this area as part of the downtown (Main Street and Marlboro Street).

Councilor Hansel raised concern about applying 79-E to residences and agreed with the Mayor that any wording changes were appropriate.

Mr. Lamb referred to language from 79-E and added 79-E is focused on "the downtown" or a "commercial district" and this has been clear throughout the statute.

Mr. Lamb referred to page 24 and proposed this amendment: The intent of this Residential Preservation District (RP) is to ~~provide~~ *create an additional downtown district* and/or re-create a neighborhood of residential properties that prioritizes family units.

Mr. Barrett asked whether at some point the Residential Preservation District was to be applied to a part of Keene which is not thought of as part of the downtown, would it be an obstacle? Mr. Lamb stated the language at that time would need to be assessed to see if it would be appropriate for that part of the City. There might be certain amendments required or a separate district would need to be created.

Councilor Sapeta asked whether it would make sense to define the zone of downtown and then have language which points to the downtown zone. Mr. Lamb stated the manner in which he reads 79-E

gives the City more options including a master plan option of what the central business district or downtown district is.

Dr. Cusack asked whether there was a zoning district referred to as “downtown”. Mr. Lamb stated what we have is the Central Business zoning district. Dr. Cusack asked whether the terminology was correct referring to this as “*creating an additional downtown zoning district*”. Mr. Lamb stated this is the terminology available through the 79-E legislation. Councilor Sapeta felt creating a specific downtown zone would be easier to deal with in the future. He asked whether this item could be continued so that type of zone could be specified. Chair Richards stated the reason for 79-E is to spur economic development and the City would like it in this area for that purpose. He indicated when the zoning is crafted; the City can pick and choose where 79-E could be located. This is a tool to encourage economic development. What the Joint Committee is doing today is to say it is going to be allowed in a particular zone and where it is eventually going to be used is a larger discussion which has not even started to happen.

Mayor Lane asked everyone not to over analyze anything yet as the ordinance has not yet been written. The City has a long way to go before the City applies this to any particular district.

**Second Change:**

Owner occupancy – Page 25 – *Affidavit of owner-occupancy for new structures with Certificate of Occupancy* – is being deleted.

*Sec. 102-770.2 - General 1) In the case of a “Duplex/Two-Family Dwelling”, the property owner must occupy one of the two dwelling units* – is being deleted.

Chair Richards asked how the new ADU definition ties into a duplex. Ms. Chalice stated these are two separate terms. An ADU offers the opportunity for a separate housing option within the proposed Residential Preservation zoning district. Mayor Lane asked whether an ADU and a duplex achieve the same purpose. The Mayor asked if the permitted use of a duplex was eliminated, will the City achieve what it wanted when it started without having to allow a duplex. Ms. Chalice stated that the two housing options are not exactly the same but the ADU does provide an additional housing option within the proposed Residential Preservation single family housing district. Mr. Lamb noted duplexes are proposed to be permitted in the Neighborhood Business District and staff is in agreement with what the Mayor is proposing.

Mr. Barrett stated an attached ADU does have a size limit; if there is a building that is 2,000 square feet in total and it is a side by side duplex and each unit is 1,000 square feet, this would not be allowed under the ADU law. However, as a duplex it would be allowed. (Maximum size of an ADU is 800 square feet and a minimum size of an ADU is 400 square feet). Mr. Lamb stated that an owner could always apply for a variance to increase the size of an ADU. The Mayor asked whether the Committee could increase the size of an ADU. Mr. Lamb stated the Committee would have to re-open up the ordinance discussion again but the Committee does have this prerogative under the statute to do so – the state law dictates a minimum, not a maximum.

Councilor Hansel stated any opportunity the City has to reduce the number of variances it has to grant, it should try to do so.

Chair Spykman asked whether the Committee would then eliminate the size requirement or set the size to a higher number, and if it does that how the Committee would come up with that number?

Mr. Barrett stated most of the older homes in Keene which are divided into two might have units on the first and second floors or side by side and might not necessarily be the same size. The ADU ordinance also had language, which said the owner did not have to live in the larger unit. He felt this is not an ordinance the City should be rushing into. If there is no size limit, he asked how a number can be assigned. Mr. Lamb felt it was important for the Committee to settle on a size limit; for the primary purpose this is as an *accessory* dwelling, *secondary* to the primary unit. These units are meant to serve as in-law apartments and such (of a lesser size compared to the primary unit). The original ordinance had a limit of 30% of the original structure but this had to be eliminated because of the minimum 750 square foot size under the statute. Mr. Lamb added there was good reasoning for the proposal at the 800 square feet but wasn't sure whether this particular SF limit is appropriate for what the committee was trying to achieve.

Mayor Lane noted because it is an "accessory" unit, wouldn't the size be dictated by the size of the lot? Mr. Lamb agreed this was possible due to the "lot coverage" limitation.

Councilor Sapeta stated for the proposed Residential Preservation zoning district he would like to remove the option for a duplex as this is a district that is close to the college which could allow eight students to live in one unit allowing 16 students to live in a duplex, which almost looks like a lodging house. He felt there is already a large concentration of college housing in this area. As far as the ADU is concerned, the Councilor did not feel a change was necessary as it is intended to serve as has been said, as an "in-law" apartment. The Councilor also talked about the flooding in this area and felt increasing the number of units and associated parking would only exacerbate this issue.

Dr. Cusack agreed with what Councilor Sapeta said and if this is a Residential Preservation District, and if duplexes and rentals are permitted, this area will never be returned to a residential area and the neighborhood would never be revitalized. Chair Spykman asked whether this affects existing duplexes. Ms. Chalice stated this ordinance would only affect new duplexes. Mr. Lamb stated the pre-existing homes would then become non-conforming.

Chair Spykman asked for public comment.

Councilor Manwaring addressed the Committee and referred to language from the RP District and stated prioritizing residences has been the goal of the southeast Keene neighborhood. She noted this area is overloaded with rental units and most of them are occupied by college students. She stated however that the reason for encouraging owner occupied units is to encourage families to return to this area. So she asked that duplexes not be removed from this ordinance. Councilor Manwaring asked to please not remove the duplexes. The Councilor added this area also has absentee landlords and this is another reason for an owner-occupied requirement.

Councilor Manwaring asked what happens when a landlord wants to dispose of, for instance, a four unit apartment he/she has not been able to fill? How do we encourage a family to purchase this unit and how do you change this to a duplex? Mayor Lane explained when a large home like this sells it becomes a non-conforming use and the City does not have the legal ability to change the use of that house; only the owner can change that use. However, if the owner changes this use, he/she has to comply with the existing zoning ordinance.

Councilor Sapeta asked whether an ADU can be created for instance from a 2,500 square foot house. Mr. Lamb agreed it could be done as an add-on to the building or it could be an internal conversion of the existing building.

Ms. Vicky Morton of 275 Water Street was the next speaker. Ms. Morton stated her home is currently surrounded by homes that are now two family units but were single family homes in the past. She stated she would like clarity on duplex versus two-family buildings. She also noted the home on Fairfield Court and Water Street is for sale and asked what happens to this property; would the sale affect that property. Mr. Lamb stated once the first notice for the public hearing on the ADU is posted, all properties are subject to that change and any application after that notice will have to adhere to this change.

Ms. Chalice referred to the definition question and called the Committee's attention to page 34 regarding *Duplex/Two-Family Dwelling – means one building designed, occupied or intended for occupancy by two separate families; each a complete, independent living facility with separate, permanent, full provisions for sleeping, eating, cooking and sanitation. Each of the two dwelling units shall provide complete internal access to all rooms in the unit.*

She indicated should this ordinance pass; there would be no difference between a duplex and a two-family dwelling.

Ms. Morton stated her neighborhood has changed; there are less Keene State students but other negative elements have moved into the neighborhood.

Mr. Tim Zinn of 43 Grove Street stated he owns a two-family home where he is currently renting the first floor unit. He asked if he is to sell this property whether he would be required to sell it as an owner occupied property. Chair Spykman stated if this ordinance passes Mr. Zinn's property would remain as a pre-existing, non-conforming property. When it is sold, if the person who purchases the property does not make any changes, it will remain a pre-existing, non-conforming property.

Mr. Zinn stated his observation for his neighborhood is that one landlord seems to be purchasing most of the properties and most of these properties are income-generating student rentals. He wasn't sure how the City would manage such as issue.

With no further comments, Chair Spykman closed the public hearing.

Mr. Lamb explained there are so far two changes the Committee is proposing which they will vote on as a C version. The first is to add language to the Residential Preservation District relative to 79-E. The second is the removal of "duplex/two-family" from the Permitted Principal Uses table in the Residential Preservation District.

**Third Change:**

Ms. Chalice stated it came to staff's attention the two uses "duplex/two-family" and "single-family" had been left off the Principal Permitted Uses in Neighborhood Business District. She noted even though small business is being encouraged in this neighborhood, it was not mean to be at the expense of the possibility of new duplex/two-family and single-family units - Page 21, 3A (Marlboro Street).

Chair Spykman asked whether the Committee wants to take out the duplex/two-family as was discussed with the Residential Preservation District with the knowledge that ADU's are possibility. Mr. Lamb stated Neighborhood Business District is more business oriented and it is intended to be denser and is intended to have a greater variety of mixed uses.

The Chair asked for public comment on the third change – adding “duplex/two-family” and “single-family” uses to the Neighborhood Business Zoning District.

**Fourth Change:**

Even though the term “mixed use development” is in the intent statement for Business Growth and Reuse Zoning District and the Neighborhood Business Zoning District, staff had failed to add it to the NB zoning district’s Permitted Principal Uses table.

The Chair asked for public comment on the fourth change.

**Fifth Change:**

Final change being proposed is the removing of each of the dimensional tables from the ordinance where it was utilized for discussion purposes and adding it to the main basic dimensional requirements table used for the zoning ordinance (all in one place).

**Amendments:**

Mayor Lane made the following amendment: “Amend Section 102-770 ‘Intent’ on page 24 – Residential Preservation Zone – First sentence to read ‘*The intent of this Residential Preservation Zone is to create an additional downtown zoning district to provide...*’”. The amendment was seconded by Councilor George Hansel. The motion was unanimously approved by the Joint Committee.

Chair Richards made the following amendment: To remove the term “duplex/two-family dwelling” from the list of permitted uses in Residential Preservation Zoning District in Section 102-770.1. The amendment was seconded by Councilor George Hansel. The motion was unanimously approved by the Joint Committee.

A motion was made by Mayor Kendall Lane that the Planning Board finds O-2016-01-C in compliance with the Master Plan. The motion was seconded by Councilor George Hansel and was unanimously approved.

A motion was made by Chair David Richards that the Planning Licenses and Development Committee request the Mayor set a public hearing on for O-2016-01-C. The motion was seconded by Councilor George Hansel and was unanimously approved.

**Next Meeting – September 11, 2017**

**4. Adjourn**

The meeting adjourned at 8:10 pm.

Respectfully submitted, Krishni Pahl,  
Minute Taker  
Reviewed by Rhett Lamb, Planning Director  
Edits by Lee Langella