

CITY OF KEENE
NEW HAMPSHIRE

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

Monday, September 9, 2019

6:30 PM

Council Chambers

Planning Board Members Present

Chris Cusack, Vice-Chair
Martha Landry
Mayor Kendall Lane
Pamela Russell Slack
Councilor George Hansel
Gary Spykman
Tammy Adams, Alternate

Planning Board Members Not Present

Doug Barrett, Chairman
Andrew Weglinski
Michael Burke

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

Councilor David Richards, Chairman
Councilor Robert O'Connor
Councilor Katie Boseley
Councilor George Hansel

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

Councilor Philip Jones

Staff Present

Rhett Lamb, Community Development Director
Mari Bruner, Planner
Tara Kessler, Senior Planner

1. Call to Order & Roll Call

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

2. Approval of Meeting Minutes – April 8, 2019

A motion was made by Mayor Kendall Lane that the Joint Committee accept the April 8, 2019 meeting minutes. The motion was seconded by Councilor George Hansel and was unanimously approved.

3. Public Workshop

Ordinances – O-2019-13 and O-2019-14 – Relating to Social Service and Congregate Living Uses. Petitioner, City of Keene, proposes changes to Chapter 102 – Zoning, Chapter 46 – Licenses and Permits, Chapter 18 – Building Regulations, and Appendix B – Fee Schedule of the City Code of Ordinances. The amendments proposed include the introduction of land uses categorized broadly as Social Service and Congregate Living uses as well as a conditional use permit and City operating license for some of these uses.

Mr. Kopczynski began by introducing John Rogers, Zoning and Code Enforcement Superintendent, Tara Kessler, Senior Planner and Rhett Lamb, Community Development Director. Mr. Kopczynski stated the goal of Building Better Together was to update the land development regulations. He stated the city's land development regulations were adopted on August 6, 1969 and this is when the

city had the 1970's version of the zoning code, which built upon the 1957 version, which in turn built upon the 1935 version. Mr. Kopczynski stated the city is in the process of streamlining its landuse regulations, which will make it easier for the public to understand them.

The changes look at restructure and reorganization, however, keeping in mind there are subject areas that require in depth discussion. Today's workshop is the first discussion for the zoning ordinance for this subject area and the goal today is to gather public comment before the item goes before City Council for a public hearing. He noted this draft ordinance proposes significant changes. There are preliminary comments that have been received, which staff plans on addressing. He stated the role of the Joint Committee is to solicit comments from the public; and staff will be looking at the Committee for direction for proposed changes to the draft.

Mr. Rogers addressed Committee next. He indicated Keene uses what is referred to as prescriptive zoning – where each zoning district prescribes what the permitted uses are. He noted the plan is also to remove outdated uses from certain districts (tannery, explosive manufacturing). There is also some attempt to build consistency between the zoning code and the building code. He noted for instance “lodging house” and “group home” are terms which have become “catch alls”. He referred to current regulations for “health care facility”, “lodging house”, “group home” and “institutional use” – he explained institutional use seems to be misleading as it looks like it is permitted in all of the districts, while it is restricted by street listing in the zone and certain zones also require a special exception where certain criteria need to be met. Mr. Rogers noted this is not the way the city should regulate uses by having to apply for these waivers.

Mr. Rogers went on to say at the state level there are bills that are coming forward; sober home being one of those, none of them have made it through and the city is trying to get ahead of the curve.

Ms. Kessler addressed the committee next. She stated recognizing there is limited opportunity in the city code, at the direction of Council, staff contracted with Camiros, a consulting firm which has national experience working with other communities to change zoning to allow for more modern uses and create the appropriate criteria. She referred to the proposed uses suggested by the consultant – they are divided between congregate living uses and social service uses.

Under congregate living the following uses are being proposed – “homeless shelter”, “domestic violence shelter”, “residential drug treatment facility”, “residential care facility”, “group homes” and “lodging house”.

Under social service uses the following uses are being proposed – “social service center”, “food pantry” and “drug treatment clinic”.

Ms. Kessler noted these uses are currently not permitted under the city's zoning ordinance, hence the consultant identified them but also created definitions to go along with them as well as locations where they could be placed.

Some items to note with congregate living uses, do they provide medical care; are they transient in nature; is there on site supervision or not; is there a fee; is there a requirement for federal license.

She then referred to the social service uses and noted the difference here is whether medical care is required and if it requires license.

The next slide was in reference where these uses would be located and the abbreviations outline the different zoning districts. The letter “P” indicates it is a use that is permitted by right without special exception and the “SE” would indicate a special exception is required. Special Exceptions are granted by the Zoning Board of Adjustment but the proposed changes in this ordinance would require a CUP instead of a Special Exception, which will be granted by the Planning Board (lodging house and group home) and noted this is a significant change.

She went on to say the new uses have been designated to a zoning district. Ms. Kessler stated the criteria to grant conditional use permit is focused on site impact and the clients being served by these uses. Issuance of an annual operating license for the uses Ms. Kessler referred to such as homeless shelter, residential drug treatment facility, residential care facility group home, and lodging house – to make sure the agency is meeting basic life safety codes.

Mr. Kopczynski noted by eliminating the special exception component everything is being brought directly to the Planning Board with the CUP process. As a recap, Ms. Kessler stated this is an effort for the city to address its zoning, which is outdated, and create opportunities for uses.

This ordinance is also intended to create a review process for those uses and to gather public input. She indicated there was comment from the public regarding social service centers, and staff intends to bring forward a change to that definition.

The other issue is the fee. Staff feels the operating license fee, which will be \$200, could be onerous to a nonprofit or charitable organization and there is suggestion to waive this fee for both of these organizations.

Next Steps – Tonight is the first public hearing and staff is recommending a continuance to the October hearing to gather more input. Once the draft is finalized, it will go before the City Council for a public hearing and from there the ordinance will be forwarded to the PLD Committee for their recommendation. Finally the City Council will vote on the ordinance.

Ms. Kessler noted the Planning Board would be voting as to whether this draft ordinance is consistent with the Master Plan and the PLD Committee will recommend as to whether the Mayor should set a public hearing on this ordinance or not. This concluded staff comments.

Mr. Spykman asked once the changes have been made whether this item will come back before the Joint Committee. Mr. Lamb stated the Joint Committee will likely be voting on an A version with changes, City Council will get to see the original and the A version.

Chair Richards asked for public comment next.

Ms. Mindy Cambiar of Director of 100 Nights Shelter addressed the committee first. Ms. Cambiar stated separating homeless shelters and social service centers does not meet their needs. They are both and also a Food Pantry. Ms. Cambiar noted having a homeless shelter in commerce and business limited does not extend the foot print to where they have already looked at properties. She added she does not have an issue obtaining a Conditional Use Permit (CUP) or coming back each year for a license – however, she said once they find a property if abutters provide negative comments about a homeless shelter in their neighborhood and asked for consideration will be given to that aspect as well.

Ms. Cambiar noted domestic violence shelters also temporarily house homeless individuals. She further stated a food pantry is allowed in churches and in homeless shelters but asked how this fits in if a domestic violence and food pantry are being proposed to be located in several other districts other than homeless shelters. She questioned if other homeless shelters will be required to obtain licenses each year as well. She questioned if the CUP will also need to be renewed each year.

In response to some of Ms. Cambiar's questions – Mr. Lamb stated the CUP is issued once unless the use on the property changes, however, the operating license needs to be renewed each year.

As far as other homeless shelters requiring license, the answer is yes. With respect to zoning, pre-existing and vested rights would apply. Once zoning changes, legally conforming uses will continue until the use unless the use is abandoned or changes to a new use.

Mr. Lamb stated Ms. Cambiar had indicated several of these uses could be going on at 100 Nights (homeless shelter, social service center, food pantry) – by creating separate uses as is proposed under this ordinance, there is an opportunity for these to be independent uses in their proposed districts. When they are combined there is one principal use, others will be accessory uses as long as they are permitted in that district. Mr. Rogers clarified the accessory use does not have to be allowed in the district as long as the principal use is permitted; it is dictated by the square footage. Once it gets over a certain percentage it will then become a second primary use on that property.

Ms. Nancy Newton of 318 Hurricane Road addressed the Committee next. Ms. Newton stated the term abutter is confusing to her. She referred to the terms as follows:

Abutter means any person whose property is located in the state and adjoins or is directly across the street or stream from the land under construction by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" includes any person who is able to demonstrate that his land will be directly affected by the proposal under consideration.

Mr. Lamb explained if there was a CUP required and a public hearing by the Planning Board; abutters under city regulations are considered property owners who directly abut and/or those who are directly across the street or stream from the parcels, which are subject to the review. Owners of the properties located within 200 feet of the property that are subject to review. Ms. Kessler stated this is language they can review.

Ms. Newton stated she was involved in the Doorway Program at the hospital and wanted to be sure the zoning issue considers this. She noted the hospital allocates four beds for those going through addiction who have no other place to go locally.

Charles Mobilia Board member of 100 Nights noted according to the proposed ordinance 100 Nights will be limited to Central Business Limited and Commercial and also noted a homeless shelter cannot be located directly adjacent to a zoning district that allows single-family dwellings. He questioned what directly adjacent meant. Mr. Lamb stated this would mean directly abutting or touching properties. Chair Richards asked for maps for the next meeting.

Mr. Steven Bragdon of 51 Railroad Street noted there is a lot of work that has gone into this ordinance. He pointed out most homeless shelters have rules regarding substance abuse and alcohol but felt 100 Nights did not have such rules. He stated he was not sure what the CUP rules are and wanted those rules to take into consideration what is good for the community.

With respect to homeless shelters being limited to certain zones, Mr. Bragdon stated from the point of view of residents these are preferred locations for how they can access services they need. He asked whether CUP Rules are included in this document. Ms. Kessler stated the last page has the CUP criteria outlined

Mr. Tom Savastono of 77 Winter Street stated his property is located in the office zone and expressed concern about group homes being located here. He noted when he purchased his home he was advised to look at the zoning guidelines carefully and added the office zone is meant to be a buffer between residential neighborhood and the downtown and felt group homes being located in the office zone was inappropriate.

Elsa Worth Priest of the St. James Church was the next to address the Committee and asked if CUP is streamlined for the group that is applying – is it still as rigorous of a process as it is to obtain a zoning variance. Mr. Lamb stated it is different from a variance; in the existing scenario the applicant would need to come before the Board and at times would also need to go before the Zoning Board and hence combining the processes is what brought about the CUP process. Rev. Worth asked whether abutter comments are also taken during a CUP application hearing. Mr. Lamb stated abutters are invited through notice, but there are strict rules as to how the Board applies the criteria. He said abutter comment has to be about the CUP criteria.

Rev Worth stated she has seen entities like half way houses and rehab facilities having a hard time obtaining variances to locate facilities in Keene.

Mayor Lane clarified, when someone goes before the Zoning Board for a variance, they have to prove hardship to obtain a variance but the CUP process before the Planning Board does not include hardship as criteria, which he felt is a significant issue. Rev. Worth asked about the license criteria. Mr. Lamb stated the license criteria has more to do with the operation of the property for the use being proposed.

Councilor Bosley asked for a definitive list of CUP criteria and added the list included in the packet is not very clear.

Ms. Suzanne Boisvert stated she operates Prospect House on Water Street and noted to the positive experiences she had with city staff trying to get her application approved. She stated she is in support of having these standards in place for the safety of everyone. She stated she would like to know what this conditional use permit is, she felt the language was a little vague – she asked for it to be more defined. Ms. Boisvert stated the annual license concerns her and felt this could be an issue for residents who might have the fear they could be displaced. Ms. Bouvais offered her assistance as she has gone through this process.

Ms. Kessler went over the CUP criteria. She indicated the CUP process is something that is required for some users with the current zoning ordinance. There are two primary criteria to be considered in the draft ordinance:

a) The proposed use will not have a significant adverse impact on the general welfare, safety, and health of the neighborhood or community, including that of the client population being served by such uses.

b) The proposed use is compatible with the character of the surrounding area in terms of operational characteristics including hours of operation, outdoor lighting, noise, and traffic generation.

Ms. Kessler went on to say if someone was to propose operating a group home the specific criteria proposed this time would be:

Group home facilities must maintain the appearance of a residential structure. When located in an existing residential structure, the design and operation of the facility must not alter the residential character of the structure.

Ms. Kessler said the reason for that is the current definition of “group home” and the modified definition of “group home” anticipate that these group homes will be located in neighborhood settings and we want to ensure they would be compatible with those settings from an appearance standpoint.

With respect to Residential Care Facility, the language reads as follows:

When located in an existing residential structure, the design and operation of the facility must not alter the residential character of the structure.

Ms. Kessler noted this is similar to group homes, they would be allowed in neighborhoods or if they are located in a residential home, it needs to be preserved as same. Residential care facilities cover a wide range of uses such as a small home for elderly or something big like Hillside Village.

Drug Treatment Clinic – Keene does not have any, but should one be proposed two of the criteria would be:

- a. Security lighting is required. Such lighting must be adequate to deter or detect intrusions or other criminal activity during non-daylight hours – because there could be controlled substances on site.*
- b. Drug Treatment Clinics shall not be located directly adjacent to a zoning district that allows for single-family dwelling units.*

The zoning districts single-family homes will be permitted are low density, rural, agricultural, medium and high density and office.

Ms. Kessler added, as with drug treatment facilities, social service centers and homeless centers cannot be located next to single-family dwelling units.

Mr. Spykman felt the purpose of a Planning Board review is to make a decision based on criteria and felt the first two criteria could use some tightening up as these might require judgment. Rev. Worth agreed and felt the criteria Mr. Spykman is referring to is personal judgment. What constitutes health of a neighborhood, what constitutes compatibility and he felt there is apprehension about social service organizations but it is something that is needed by this community. If it is not recognized, the problem becomes worse and these problems are not getting better. Mr. Lamb stated staff can come back with some revised language but noted the Committee needs to hear criteria as it relates to license because this talks about operation which zoning does not - it does not address ongoing operation in a facility.

Mr. Bragdon stated he is sympathetic to providing for the needy but felt it is wrong to feel people can go wherever they want to go do what they want – this is why the city has zoning. He felt the city has to look at what is good for the entire community and at times, this takes judgment.

Councilor Hansel stated what the city is going to hear is how these agencies are going to have an adverse impact on property value and felt this is something staff should look at and address as well.

Mr. Peter Espiefs of 29 Middle Street and addressed the committee and stated his property is located in the office district as well as in the historic district and questioned what happens in a situation when a property is located in two districts. He questioned whether the historic district commission is aware of what is proposed and what their opinion was about locating a group home in a historic district. Mr. Espiefs stated he likes the definition of Conditional Use Permit and added people have come to live in this community because they feel protected here and stated if this is going to be watered down many will move out of this community.

Mr. Espiefs stated from Roxbury Street all the way to Marlboro Street there are agencies that deal with people who are from troubled situations and referred to some of the agencies such as Home Healthcare, Monadnock Family Services, Southwestern Community Services and Keene Addiction Clinic. He felt individuals with substance abuse problems do not just have one issue and felt being located close to such facilities will be beneficial. He asked these facilities be segregated to this area and asked the rest of Keene be left alone,

Ms. Karen Cota of 447 Park Avenue addressed the Committee next. She felt it was important to update zoning based on what is happening in the world and in our area. She felt Keene has the opportunity to address what is going on and to help those agencies trying to help people in need. Ms. Cota asked that more zones be opened up for homeless shelters. She further stated homeless shelters offer more resources to people than just providing a shelter.

Councilor Manwaring asked for criteria as it pertains to licensing.

Ms. Kessler stated the licensing criteria is intended to be more subjective, it is an application someone would be required to complete on an annual basis and will be submitted to the Community Development Department.

Required information are: Description of property location, Description of client population, Maximum number of beds, Property owner contact, Operator contact, Management plan, Security plan, Whether all required licenses have been obtained, Notification of direct abutters.

Mr. Spykman asked what the point was of involving abutters if the application is straightforward and information is complete. Ms. Kessler stated there are two reasons - one is that this process is going to be changed from a council process to an administrative process so there is awareness that these applications are being filed. The second is that if there are issues that were not known to the administrator, reviewing the application within the community and whether this applicant is adhering to the appropriate standards can then be shared. Mr. Kopczynski stated what staff has done through this process is to accommodate uses that have not been accommodated in the past and place them in districts that correspond with that impact.

Mr. Kopczynski noted siting shelters properly is important not only from the standpoint of services and how the individuals who use those shelters integrate into the community. He indicated the reason for having the operating license is exactly for what has been stated and the only one the city uses right now is lodging house and staff felt having an administrative process for the ordinance before the committee would work better together with having the abutter notice process.

Ms. Russell Slack asked by changing this from the council level to the administrative level whether there was room for an appeal. Mr. Kopczynski answered in the affirmative.

Mr. Lamb added as individuals have testified some of these uses can tend to have a significant impact on a neighborhood. A group home can have as many as 16 beds, this is not a single-family use, and in locating these facilities we need to protect the people it is serving as well as the in the neighborhoods they are being located. Hence, the operating license is going to ask for specific plans for security and management and what is taking placed here. If through testimony of abutters, Fire or Police, staff learn of behavior it could be addressed through the management plan. Mr. Lamb stated they want to create opportunity but also want to preserve neighborhoods.

Mr. Richard Newton of 318 Hurricane Road referred to the definition of abutter and stated if for instance if 100 Nights was to be located in the middle of central business and the nearest zone is ten blocks and there is a single family home which means 100 Nights won't be able to locate in central business. Ms. Kessler stated that in Chapter 102 of the zoning ordinance and in the Board Regulations, abutters are considered those 200 feet from the subject premises (site plan review process). For conditional use and the operating license, it is a direct abutter and added the subject premises would have to be directly adjacent to a single-family zoning district.

Ms. Polly Morris of Winchester, NH stated she appreciates this process but added she takes offense to the term "those people" – she indicated she has been in long-term recovery but is also a cancer survivor, she has been homeless and is also a catholic. She questioned how far the city wants to go in wanting to segregate people. She agreed we want to keep our neighborhoods safe but this is one opportunity for Keene to accept "those people" who are our sons and daughters. She indicated we need to work together which is what makes this world go around.

With no further comment, the Chairman closed the public hearing.

Ms. Russell Slack stated she appreciates the support 100 Nights received today but what was not mentioned today is that there are already existing services in Keene and there is a system in place that works. However, the issues that exist are growing and that is what we have to figure out a way to deal with.

Chair Richards stated a letter the Committee received from Janet O'Brien was made part of the record.

A motion was made by Mayor Kendall Lane that the Joint Committee continue this item to the to the October 15 meeting. The motion was seconded by Councilor George Hansel and was unanimously approved.

Chairman Richards stated that Ms. Kessler received an email from citizen, Janet O'Brien stating:
Hi Tara:

We met at the last Planning Board meeting that got cancelled on 8/12/19.

In thinking about the changes that are proposed, I am very concerned for the neighborhood as well as property values if the changes are made. I pay almost \$7,000 in property taxes and if any drug treatment clinic, group home, homeless shelter etc. were to come to this part of the city, all our values would go down as well as limit any potential buyer or renter from wanting to be here. I realize they have to go somewhere but do you do it at the expense of those that are already here and paying taxes?

I cannot come to the next meeting but would like to be apprised of what happens.

Thanks,

Janet O'Brien

4. Next Meeting – Tuesday, October 15, 2019

5. Adjourn

The meeting adjourned at 8:10 pm.

Respectfully submitted,

Krishni Pahl, Minute Taker

Reviewed and edited by Lee Langella