

City of Keene
New Hampshire

PLANNING BOARD/
PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Monday, November 16, 2020

6:30 PM

Remote Meeting via Zoom

Planning Board Members Present:

Douglas Barrett, Chairman
Christopher Cusack, Vice Chair
Mayor George Hansel
Councilor Michael Remy
David Orgaz
Pamela Russell Slack
Emily Lavigne Bernier

Planning Board Members Not Present:

Tammy Adams, Alternate
Gail Somers
Andrew Weglinski
Michael Burke

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

Councilor Kate Bosley, Chairman
Councilor Mitch Greenwald
Councilor Philip Jones
Councilor Gladys Johnsen
Councilor Catherine Workman

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

All Present

Staff Present:

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

1. Statement of Authority to Hold Remote Meeting

Chair Barrett began the meeting by reading the following statement with respect to holding remote meetings: *“In Emergency Order #12, issued by the Governor of the State of New Hampshire pursuant to Executive Order #2020-04, certain provisions of RSA 91-A regulating the operation of public body meetings have been waived during the declared COVID-19 State of Emergency.*

Specifically:

- *The requirement that a quorum of a public body be physically present except in an emergency requiring immediate action under RSA 91-A:2, III(b);*
- *The requirement that each part of a meeting of a public body be audible or otherwise discernible to the public at the location specified in the meeting notice as the location of the meeting under RSA 91-A:2, III(c).*
- *Provided, however that the public body must:*
 - *Provide access to the meeting by telephone, with additional access possibilities by video or other electronic means;*
 - *Provide public notice of the necessary information for accessing the meeting;*

- *Provide a mechanism for the public to alert the public body during the meeting if there are problems with access; and*
- *Adjourn the meeting if the public is unable to access the meeting.*
- *All votes are to be taken by roll call.*
- *All committee participants shall identify the location from where they are participating and who is present in the room with them.*

Chair Barrett said the public may access the meeting online by visiting the Zoom website, www.zoom.us/join, and entering the Meeting ID 893 8296 4232 or call (888) 475-4499, Enter Meeting ID: 893 8296 4232. View live on Cheshire TV channel 1302. For issues with access during the meeting call: (603) 209-4697. The agenda and supporting materials are available at: ci.keene.nh.us/joint-planning-board-planning-licenses-and-development-committee. Members of the public shall not be permitted to speak nor shall comments be taken until the Chair asks for public comment.

2. Call to Order & Roll Call

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

3. Ordinances O-2020-10 & O-2020-11 – Relating to the establishment of the City of Keene Land Development Code and changes to the City's downtown zoning districts. Petitioner, City of Keene Community Development Department, proposes to update and unite the City of Keene's regulations related to land use and development, including the Zoning Regulations, into the City of Keene Land Development Code; to establish 6 new zoning districts in Keene's downtown area (Downtown Core, Downtown Growth, Downtown Limited, Downtown Edge, Downtown Transition, Downtown Institutional Campus); to remove the Gilbo Avenue Design Overlay District and the Downtown Railroad Property Redevelopment Overlay District; and, to modify the SEED Overlay District. This proposed map change would affect 316 parcels, encompassing a total land area of approximately 220-acres, and would result in the removal of the Central Business and Central Business Limited Zoning Districts.

Chair Barrett explained staff will continue from where they left off last week; Articles 10 – 18 of the proposed Land Development Code will be addressed today. Senior Planner Tara Kessler addressed the committee next. Ms. Kessler noted the next meeting of the Joint session will be on December 14 at 6:30 PM and will be an in person session but also allowing for a remote opportunity. This session will tentatively take place at the Keene Recreation Center. Ms. Kessler stated staff is reviewing the proposal for this in person session with the City's Emergency Management Director and the Building and Health Official to determine if this meeting is still viable, given the recent spikes in active COVID 19 cases in the area. If this session cannot happen in person it will still happen via the remote format.

Councilor Greenwald commended Ms. Kessler for her presentation last week. He asked what limitations are being proposed with this ordinance. Ms. Kessler stated that she will try to highlight how this ordinance would affect property owners and business owners throughout her presentation. Ms. Kessler noted at the end of each meeting the minutes, presentation and meeting recording are posted to the city website and the project website which is (www.keenebuildingbetter.com). Written comments will also be accepted in advance of each meeting, and can be shared via email at communitydevelopment@ci.keene.nh.us or could be

dropped off or mailed to city hall. Staff is also happy to meet with the public and address concerns and/or review how the proposed changes might impact them.

Article 10 – Sign Regulations

Ms. Kessler began her presentation with a review of the Sign Regulations. She noted that these regulations govern the size and look of signs for businesses and other entities in the City. The changes proposed to these regulations are primarily focused on making these regulations more compliant with *Reed v. Gilbert*, which is a U.S. Supreme Court case that clarified the level of scrutiny that should be applied to content-based restrictions. An example of some changes proposed is the change of “Menu Board Sign” (a driver will have to read this sign to know it is a menu board sign) to “Drive Through Sign” (oriented more toward a land use).

Councilor Remy indicated he has heard from a business owner, who has a sign with changeable text but it is not permitted under the City’s sign regulations; their plan was to use it to indicate open/close, especially during the pandemic. He asked whether such an issue will be addressed under these new regulations. Ms. Kessler stated that electronically activated changeable copy signs are currently a prohibited sign type under the sign regulations and noted staff has not proposed any changes to the list of prohibited signs. Councilor Remy noted with reference to the menu board sign a business is only allowed one per site and asked whether this can it be changed to one per lane to accommodate multi lanes. Ms. Kessler stated this is the only significant item that is being changed to increase menu board signs to two for a business. This is an item that has seen many variances being filed by drive through businesses.

Mayor Hansel noted for a section such as this, the substance isn’t changing but the format is changing, which makes the sign code easier to understand.

Article 11 – Surface Water Protection Overlay District

Ms. Kessler continued her review with an overview of proposed changes to the Surface Water Protection Overlay District. She noted that this is an existing overlay zoning district. The purpose is to create a buffer area adjacent to surface waters (including wetlands, rivers, lakes, vernal pools, etc.) and depending on the zoning district, that buffer is either 30-ft or 75-ft. There are certain activities that require approval in the form of a Conditional Use Permit from the Planning Board in order to occur in this buffer. The only significant change proposed to this section is the proposal to remove the requirement that surface waters be exempted from the calculation of minimum lot size for subdivisions. Today you have to subtract the area of surface water present on a site and whatever area is left needs to meet the minimum zoning requirements for a subdivision to occur. For instance, if a 10-acre parcel, which has a 1 acre wetland on it, is proposed to be subdivided into two parcels in a district that requires 5 acre minimum lots, the subdivision would not be possible as there is only 9 acres available after subtracting the wetland. She noted there are rules at the state and federal level related to wetlands and shorelands that also need to be adhered to and the surface water ordinance indicates what activities could occur in the buffer zone. This draft proposes to remove this restriction. This change was presented to the Conservation Commission and they are in support of this change.

Councilor Remy asked what would prevent someone from creating a lot that is 95% covered by wetlands. Ms. Kessler stated that when the Planning Board reviews a proposed subdivision, the

Board is ensuring the proposed lots will be developable through their review, and it will be up to the Board to decide if the subdivision is viable.

Mayor Hansel noted that other changes to this ordinance were addressed at the Conservation Commission years ago, and the last time these changes were addressed before City Council it was indicated they would be discussed with the proposed Land Development Code. The Mayor noted that these changes were not incorporated in the final version of the Code that was submitted to City Council. He has discussed this with the individual who was interested in those changes. The Mayor stated the changes being proposed is an improvement and he is in support of them.

Councilor Jones stated this item has been an issue for him since it was originally discussed and he would like to see it addressed sometime in the future. He noted when this item was originally discussed, there were councilors who were under the impression the surface water protection had something to do with flood control and stated that was incorrect and this created non-conforming uses.

Community Development Director Rhett Lamb stated staff was willing to review it again if additional changes needed to be made. He agreed the ordinance did create some prohibitive activities but was limited only to the buffer area.

Article 12 – Hillside Protection Overlay District

Ms. Kessler moved on to review the proposed changes to the Hillside Protection Overlay District. She noted that this is similar to the Surface Water Ordinance where it imposes restrictions related a natural feature, in this case, it imposes restrictions on what activities can occur on steep slope areas. This is an existing district and no significant changes are being proposed to these regulations. There is, however, a proposal to remove requirement that steep slopes be exempted from the calculation of minimum lot size for subdivisions of a certain size, which is a standard currently under the Planning Board regulations (similar to what was discussed previously with the surface water ordinance). Staff is also proposing graphics to clarify some of the standards and measurements.

Chair Barrett asked whether the terms prohibitive slopes and precautionary slopes are only applied when you have an elevation of at least ten feet. Ms. Kessler stated for the calculation of steep slopes is based on a measurement involving a slope calculated over a specified horizontal distance. Mr. Lamb added the key factor is the horizontal length, anything less than 40 feet is not considered a hillside. Councilor Jones noted this would apply only to a very few instances in the city. Mr. Lamb agreed this is intended for steeper slopes in the city.

Article 13 – Telecommunication Overlay District

Ms. Kessler stated the changes being proposed to the Telecommunication Overlay District are to make the regulations consistent with state and federal regulations. Mr. Lamb added this regulation is for installation for telecommunication facilities on private properties. Mr. Lamb recalled a recent ordinance that was adopted for small wireless facilities ordinance that address telecommunication facility installation in the city right of way. This is outlined in a separate chapter of the city ordinance and is not proposed as part of the Land Development Code.

Article 14 – Sustainable Energy Efficient Development (SEED) Overlay District

Ms. Kessler explained the SEED Overlay District was established in the downtown to provide property owners in this district the option of voluntarily constructing a green building in exchange for zoning incentives (e.g. greater density, height, use options). It was adopted in 2010 and only one property has taken advantage of it – The Mills. With the proposed new Downtown Zoning Districts which offers greater flexibility with use options and dimensional requirements, staff inadvertently removed or reduced the incentives offered through SEED for green development. She noted the review/update of the SEED District has not been prioritized as part of this current code update but is something that is being proposed to be reviewed in the future.

For this code, the proposal is to shrink the existing SEED District to those areas that would not be impacted by the proposed zoning update. SEED areas A and B generally encompass the area of the downtown north of Water Street and south of Railroad Street to the east, the area between Gilbo Avenue and Winchester Street to the west, and also Winchester Court to the south. Much of this area will become Downtown Growth or Downtown Core. The area not changing would be the area around Wilson and Blakes Streets and Winchester Court.

Article 17 – Anti-Nuisance Standards (referred to as Performance Standards under the current Ordinance)

Ms. Kessler noted that this Article on Anti-Nuisance standards is focused on general standards that apply to all properties to prevent or reduce the potential for nuisances such as, Erosion / Drainage Impacts, Glare, Noise & Vibration, Noxious Gases. These standards are related to the longer term impacts that might occur from a development. Ms. Kessler stated that standards, for the most part, reflect the current regulations in the Zoning Ordinance. Currently they are called performance standards. One significant change proposed is related to the noise standard. She noted that the current noise standard is a maximum of 70 dBa at the property line for properties in all districts. This standard differs from the City's Noise Ordinance, which is a section of City Code regulating when certain activities that produce noise can occur and temporary noise impacts. The Noise Ordinance is enforced by the Police Department. The noise standards in Article 17 refers mostly for long term impact, such as a loud HVAC unit. Ms. Kessler indicated this standard relates to the Planning Board's standard regarding noise.

Ms. Kessler stated in reviewing noise regulations from across the country and the state, staff have proposed modifications to the sound level limits. The proposal is for residential zoning districts to have a maximum sound level limit of 60 dba during the day and 50 dBa at night. All other zoning district would maintain the 70 dBa would still remain the maximum level at the property line during the day and would be lowered to 55 dBa at night.

Article 18 – Nonconformities Nonconforming Structure

Ms. Kessler noted that this Article is focused on how nonconforming uses and structures are addressed related to the Zoning Ordinance. She explained what a nonconforming use and structure are, and noted that if the proposed changes to the City's regulations are adopted, there may be some structures and/or uses that are currently compliant with the regulations but would no longer be conforming to the amended regulations. If there is a use that is currently legal but in the future would no longer be legal, this use would be considered legally nonconforming (some use the term "grandfathered") and would be permitted to continue operation.

Ms. Kessler went over the following definitions:

Nonconforming Structure - A principal or accessory structure that was lawfully erected but because of subsequent amendments to the Zoning Regulations has been made nonconforming.

Nonconforming Use - Use of a structure or land that at one time was a permitted use within a zoning district but as a result of subsequent amendments to the Zoning Regulations is no longer allowed.

Ms. Kessler went on to say if a nonconforming structure was to be expanded, it can be done up to a certain amount but certain standards need to be followed. On the other hand if a nonconforming use was to be expanded, an applicant will need to go before the Zoning Board of Adjustment for approval.

Ms. Kessler stated under the current code the city allows nonconforming use to change to another nonconforming use. She referred to that language as follows:

Sec. 102-207. - Changes of nonconforming uses. The zoning board of adjustment may, in appropriate circumstances and with appropriate safeguards, permit a nonconforming use to be changed to another nonconforming use, provided such changed use is more in conformity with the spirit and intent of this chapter than the prior use and is not more injurious, obnoxious or offensive to the neighborhood than the existing use. (Code 1970, § 2339.6)

She noted that staff have proposed that this allowance to go from one non-conforming use to another be removed.

Councilor Remy asked once this new Ordinance is approved whether variances granted by the Zoning Board of Adjustment based on the old code would automatically apply to the use, if a building has not been constructed. Ms. Kessler stated those variances approved by the Zoning Board of Adjustment will be preserved up to two years. If it is not the variance is not acted upon in this timeframe, regardless of whether the City amends its regulations, this approval will expire. If the variance approval expires and the new regulations are adopted, the applicant would be subject to the new regulations.

Article 16 – Solar Energy System Conditional Use Permit

Ms. Kessler provided a review of Article 16 related to Solar Energy System Conditional Use Permits. She noted that the current regulations do not address solar systems as permitted uses nor do they provide standards for regulating or reviewing proposed systems. She noted that the proposed Land Development Code includes standards related to accessory and principal solar uses.

Ms. Kessler explained that an example of solar energy systems as an accessory use would be a roof-mounted solar energy system or a ground-mounted system of a certain size or less that is located on the same lot as the building/structure it is providing energy to. She noted that accessory uses of this type would be allowed in all districts, however, staff have proposed some standards related to these uses. On a sloped roof, the highest point of a roof-mounted system cannot exceed the highest peak on the roof which it is attached. On flat roofs the highest point of system cannot exceed 10 feet above the roof surface. The equipment cannot extend the exterior perimeter of what it is attached to. Accessory ground mounted systems cannot exceed a 2,000 sf

footprint, has to be accessory to principal use on the same lot, cannot exceed 15-ft high at maximum tilt and has to comply with setback and lot coverage under zoning requirements.

She noted that staff is proposing three categories of ground-mounted solar energy systems as principal permitted uses, which are described below. These would be the main use occurring on a lot.

Small Scale: A solar energy system which has a footprint that does not exceed 2,000 square feet. This system is being proposed to be allowed in Rural, Downtown Edge, Downtown Institutional, Commerce, Commerce Limited, Business Growth and Reuse, Corporate Park, Industrial, Industrial Park and Health Care Districts. The standard being called for is that it cannot exceed 15 feet high at maximum tilt and it needs to comply with setback and lot coverage zoning requirements.

Medium Scale: A solar energy system that would be between 2,001 square feet and 1-acre in size, and it cannot exceed 15-feet high at maximum tilt. This system is being proposed to be allowed in Rural, Downtown Edge, Downtown Institutional, Commerce, Commerce Limited, Business Growth and Reuse, Corporate Park, Industrial, Industrial Park and Health Care Districts by conditional use permit to be issued by the Planning Board.

Large Scale: A solar energy system that would be greater than an acre in size but cannot exceed 20 contiguous acres. It cannot be located on parcels less than 5 acres in size and cannot exceed 15 feet high at maximum tilt.

This system is proposed to be allowed in Rural, Business Growth and Reuse, Corporate Park, Industrial, and Industrial Park Districts by conditional use permit.

Ms. Kessler went on to say for this use to occur the operator would need to apply for a conditional use permit through the Planning Board and there are standards outlined in Article 16 of the Land Development Code which outline what would be required for medium and large scale systems. The proposed standards are generally as follows:

- A minimum setback of 50 feet from all exterior property lines and existing public rights-of-way would be required.
- The area that are encompassed by the components of these systems shall not exceed 70% of the lot.
- Visual impact shall be mitigated through visual buffer; clearing of trees and vegetation shall be limited as possible.
- The panels need to be properly spaced for infiltration.
- All on-site power and communication lines shall be buried.
- The applicant will be required to submit decommissioning and site restoration plan and security for when they abandon the system.

Congregate Living & Social Service Uses

Ms. Kessler moved on to discuss the topic of Congregate Living and Social Service uses, for which there are two sections of the proposed code to review (Article 8 and 15). Ms. Kessler explained the uses currently allowed in the City's zoning ordinance were last comprehensively reviewed in the late 1960s, over fifty years ago. Since that time land use has evolved and there has been demand for uses that were not anticipated at that time. In addition, the nature of certain uses has changed over time. With respect to Congregate Living and Social Service Uses, the

City's current zoning with respect to this category of uses is outdated. Recognizing this, the City Council directed staff to look at opportunities for uses of this type to occur in City and establish a review process/standards for the permitting of some uses in certain areas. There was also an interest in ensuring that standards and definitions related to this category of uses align with the current building, fire and life safety codes.

In September of 2019, staff introduced a draft ordinance which was reviewed through multiple public workshops before the Joint Committee. In March, the Joint Committee voted to integrate the draft ordinance into the proposed Land Development Code.

Congregate Living Uses that are being proposed include: Homeless Shelter, Domestic Violence Shelter, Residential Care Facility, Residential Drug/Alcohol Treatment Facility. Group Home and Lodginghouse as well as Fraternity/Sorority are uses that are currently defined and addressed within the Zoning Regulations; however, this proposed Code proposes modifications to the definitions and standards for these uses.

She noted that the social service uses proposed include: Food Pantry, Drug Treatment Clinic, and Group Resource Center.

In the proposed code Article 8 defines uses, use limitations, and districts where uses are permitted. Article 15 establishes standards for a Congregate Living and Social Service Conditional Use Permit. Ms. Kessler explained that the ordinance, O-2020-10 also proposes amendments to Chapter 46 in the City Code of Ordinances (which is not included in the proposed Land Development Code) addressing the standards for a Congregate Living / Social Service License that would be reviewed/issued by City Council, and would be required for certain uses, and would need to be renewed annually.

Ms. Kessler went over where these proposed uses would be permitted and what standards will apply.

Domestic Violence Shelter - A facility that provides temporary shelter, protection, and support for those escaping domestic violence and intimate partner violence, including victims of human trafficking. A domestic violence shelter also accommodates the minor children of such individuals. The facility may also offer a variety services to help natural persons and their children including counseling and legal guidance. The facility shall be managed by a public or non-profit agency with in-house supervision provided on a 24- hour basis.

Ms. Kessler stated there has been concern raised by the public regarding the lack of proposed standards for domestic violence shelters. This use is not explicitly permitted in the current Zoning Ordinance. This use is proposed to be located in medium density, high density, commerce, downtown edge, downtown growth, downtown limited and downtown core districts and they would be permitted by right as long as they adhere to the following standards:

- a. *Any new domestic violence shelter use shall not be located within 750-ft (measured at the property line) of any preexisting domestic violence shelter use.*
- b. *Shall not have more than 12-occupants at any time if located within or directly adjacent to residential zoning districts.*

c. If located within a residential zoning district, shall maintain the appearance of a residential structure and the design and operation of the facility shall not alter the residential character of the structure.

Food Pantry is another use that will be permitted by right without a conditional use permit or license. The definition for Food Pantry, which is not currently a use permitted in the Zoning Ordinance, would be: *A non-profit organization that provides food directly to those in need. Food pantries receive, buy, store, and distribute food. Food pantries may also prepare meals to be served at no cost to those who receive them.* This use is proposed to be permitted in the commerce, downtown edge, downtown growth, downtown limited and downtown core zoning districts.

Drug Treatment Clinic- *A non-residential facility authorized by the state to provide treatment and licensed drugs to natural persons, including, but not limited to, methadone or suboxone, to manage and treat drug dependencies.*

Ms. Kessler listed the standards for operation of a drug treatment clinic, which include:

- a. Shall not be constructed or operate without first having obtained a Congregate Living & Social Services Conditional Use Permit.*
- b. Annually, shall obtain a Congregate Living & Social Services License from the City Council*
- c. Security lighting is required and shall be adequate to deter or detect intrusions or other criminal activity during non-daylight hours.*
- d. If this use is located directly adjacent to a residential zoning district there shall be a building setback of 50-ft from the property line, unless an alternative solution is approved by the Planning Board as part of a site plan.*

Drug Treatment Clinic is proposed to be permitted by conditional use permit in the commerce, downtown growth and healthcare districts.

Fraternity / Sorority is currently considered a lodginghouse and for this proposed code it has been separated out. The proposed definition is: *A place of residence, with or without meals, for natural persons that are all members of or pledged to a local or national fraternity or sorority.* For this use to be permitted, a conditional use permit would be required from the Planning Board and annually, a Congregate Living & Social Services License would be required from the City Council. This use is proposed to be permitted in the downtown institutional campus zoning district. As a lodginghouse, this use is permitted today in the high density and central business limited zoning districts.

Group Home is a use that is permitted in most residential zoning districts today. As the current definition of Group Home does not have a limit on the number of people that can reside in it, staff proposed reducing the areas where Group Home would be allowed in the City and the process by which they would be permitted in an effort to address concerns for density and proximity to services. In the summer, following the release of a preliminary draft of the Land Development Code, Staff and the Joint Committee heard concerns from residents about the proposal to permit group homes in their zoning district. With respect to density considerations and the intent of zoning districts, staff proposed that two categories of Group Home be created – small and large. Small would permit up to 8 unrelated individuals to reside as a household unit, and large would permit up to 16 unrelated individuals. Both large and small group homes are proposed to be permitted by a conditional use permit process. Group Homes with 4 or fewer

persons would be considered a single-family dwelling and would continue to be permitted in any district where single-family homes are permitted and would be permitted by right (a conditional use permit or license would not be required). Ms. Kessler noted that staff are recommending that Small Group Home be permitted in all zoning districts that permit single-family homes, which would be more closely aligned with what is permitted in the Zoning Ordinance today, and would address the concerns related to density impacts of permitting a group home of an unlimited number of residents to be located in a zoning district that is intended for single-family residential development.

Ms. Kessler reviewed the proposed differences between Large and Small Group Home in the proposed code.

Group Home, Large – *A facility providing living accommodations and care for up to 16 unrelated natural persons who are in need of personal care services and/or are in need of supervision. Group home may include non-medical drug and alcohol rehabilitation. A group home with 4 or fewer residents is considered a single-family dwelling.*

The following are the proposed standards for the operation of a Group Home Large:

- a. *Only 1 shall be permitted per lot.*
- b. *Shall not be constructed or operate without first having obtained a Congregate Living & Social Services Conditional Use Permit.*
- c. *Annually, shall obtain a Congregate Living & Social Services License from the City Council.*
- d. *If located within a residential zoning district, shall maintain the appearance of a residential structure and the design and operation of the facility shall not alter the residential character of the structure.*

Large Group Home is proposed to be permitted in the downtown core, downtown growth, downtown limited and high density zoning districts.

Group Home, Small – *A facility in a residential dwelling, providing living accommodations and care for no more than 8 unrelated natural persons who are in need of personal care services and/or are in need of supervision. Small group home may include nonmedical drug and alcohol rehabilitation. A group home with 4 or fewer residents is considered a single-family dwelling.*

The following are the proposed standards for the operation of a Small Group Home:

- a. *Only 1 shall be permitted per lot.*
- b. *Shall not be constructed or operate without first having obtained a Congregate Living & Social Services Conditional Use Permit.*
- c. *Annually, shall obtain a Congregate Living & Social Services License from the City Council*
- d. *If located within a residential zoning district, shall maintain the appearance of a residential structure and the design and operation of the facility shall not alter the residential character of the structure.*

Small Group Home is proposed to be permitted in the medium density, office and downtown transition zoning districts.

Group Resource Center – *An establishment designed with the primary purpose of providing access to services related to counseling, personal care, or social well-being in a group setting. It*

does not include in-patient, overnight services, or treatments normally conducted in a medical office.

The following are the proposed standards for the operation of a Group Resource Center:

- a. Shall not be constructed or operate without first having obtained a Congregate Living & Social Services Conditional Use Permit.*
- b. Annually, shall obtain a Congregate Living & Social Services License from the City Council*

Group Resource Center is proposed to be permitted in the downtown core, downtown edge, downtown institutional campus, commerce, downtown limited and health care zoning districts.

Homeless Shelter – *A facility that provides temporary shelter without a required fee to natural persons who are homeless. The facility shall be managed by a public or non-profit agency with in-house supervision provided during operation.*

The standards being proposed for Homeless Shelter are:

- i. Any new homeless shelter use shall not be located within 750-ft (measured at the property line) of any pre-existing homeless shelter use.*
- ii. Any new homeless shelter shall not be located within 500-ft of any preexisting public or private school, or child day care center.*
- iii. Homeless shelters with more than 16-occupants shall not be located directly adjacent to a residential zoning district.*
- iv. All outdoor activity areas on-site shall be screened from public view and from the view of adjacent properties with a min 6-ft high solid fence.*
- v. The facility shall provide indoor and/ or outdoor waiting areas of a sufficient size to accommodate demand and to prevent queueing on the public right-of-way. Such waiting areas shall be screened from view.*
- vi. Shall not be constructed or operate without first having obtained a Congregate Living & Social Services Conditional Use Permit.*
- vii. Annually, shall obtain a Congregate Living & Social Services License from the City Council*

Ms. Kessler noted that staff developed these standards based on feedback from some Joint Committee members that there is an interest in trying to ensure that density impacts of this proposed use and potential land use impacts on residential neighborhoods/district are addressed.

Homeless would be permitted in the downtown growth and commerce zoning districts.

Lodginghouse – *Any dwelling for between 5 and 16 unrelated natural persons, which provides separate rooms for sleeping for a fee, without personal care services and without separate cooking facilities for individual occupants. A lodging house may include separate living quarters for an on-site property manager. For purposes of this shall not include a hotel or motel.*

The following are the proposed standards for Lodginghouse:

- a. Only one shall be permitted per lot, and no other residential uses shall be permitted on the same lot as a lodging house.*
- b. Shall not be constructed or operate without first having obtained a Congregate Living & Social Services Conditional Use Permit.*

c. Annually, shall obtain a Congregate Living & Social Services License from the City Council d. If located within a residential zoning district, shall maintain the appearance of a residential structure and the design and operation of the facility shall not alter the residential character of the structure.

Lodginghouse is proposed to be permitted in the downtown core, downtown edge, downtown growth, downtown limited, business growth and reuse, commerce, high density, high density 1, health care and neighborhood business zoning districts.

Residential Care Facility – *A licensed facility that provides 24-hour medical and/or non-medical care to natural persons in need of personal care services, supervision, or assistance essential for sustaining the activities of daily living, or for the protection of the individual. A residential care facility may include nursing care, assisted living, hospice care, and continuum of care facilities. Residential care facility does not include a residential drug/alcohol treatment facility.*

The standards being proposed for Residential Care Facility are:

- a. Shall not be constructed or operate without first having obtained a Congregate Living & Social Services Conditional Use Permit.*
- b. Annually, shall obtain a Congregate Living & Social Services License from the City Council.*
- c. If located within a residential zoning district, shall maintain the appearance of a residential structure and the design and operation of the facility shall not alter the residential character of the structure.*

Residential Care Facility is proposed to be permitted in the downtown core, downtown edge, downtown growth, downtown limited, business growth and reuse, commerce, high density, high density 1, health care and neighborhood business zoning districts.

Residential Drug/Alcohol Treatment Facility – *A licensed facility that provides 24-hour in house supervision for medical and/or non-medical/therapeutic care of natural persons seeking rehabilitation from a drug and/or alcohol addiction. Such facilities may include medical detoxification.*

The standards being proposed for Residential Drug/Alcohol Treatment Facility are:

- a. Shall not be constructed or operate without first having obtained a Congregate Living & Social Services Conditional Use Permit.*
- b. Annually, shall obtain a Congregate Living & Social Services License from the City Council*

Residential Drug/Alcohol Treatment Facility is proposed to be permitted in the downtown growth, downtown limited, commerce and health zoning districts.

Councilor Jones asked how the overflow issue would be addressed with homeless shelters. Ms. Kessler stated based on what is proposed a homeless shelter would need to show that they meet the proposed standards or obtain a variance. She noted that this is an issue that may involve further discussion and consideration with respect to the proposed standards.

Councilor Workman asked for occupancy number for domestic violence shelter. Ms. Kessler stated the proposed code limits occupancy to 12 for domestic violence shelters in or directly adjacent to a residential zoning district, and stated this limit was based on trying to address the concern for density of this proposed use in a residential zoning district. The Councilor asked

whether the occupancy number would be 12 families or 12 individuals to also include children. Ms. Kessler stated the number includes children but these are proposed standards and the committee may consider proposing amendments to this standard. Mr. Kopczynski felt that adjusting these numbers might be an important exercise and what needs to be kept in mind is that this use is less likely to cause issues related to traffic.

Vice Chair Cusack asked for clarification on the number for Group Home Small versus Group Home Large. Ms. Kessler explained one allows for up to eight unrelated individuals and the other allows for up to 16. Ms. Kessler stated staff can work on further clarifying this information, especially in the permitted use table.

Councilor Bosley asked where a facility such as an elder care facility where personal care will be provided but residents will not stay overnight. Ms. Kessler stated this might fit under Group Resource Center, or Senior Center, depending on the services offered and nature of the use.

Ms. Kessler then went over the proposed Conditional Use Permit Criteria for Congregate Living and Social Service Uses.

She noted if someone was proposing to change the use of a property or establish a new use on a site, the following uses would require a Conditional Use Permit from the Planning Board: Drug Treatment Clinic, Group Home Large, Group Home Small, Fraternity/Sorority, Group Resource Center, Lodginghouse, Residential Care Facility, Residential Drug/Alcohol Treatment Facility and Homeless Shelter.

Ms. Kessler went over the proposed conditional use permit review criteria. In the proposed code, the applicant would need to demonstrate and the Planning Board would need to make the following findings:

a. The nature of the proposed application is consistent with the spirit and intent of the Zoning Regulations, this LDC and the City's Comprehensive Master Plan, and complies with all the applicable standards for the particular use.

b. The proposed use will be established, maintained, and operated so as not to endanger the public health, safety, or welfare.

c. The proposed use will be established, maintained, and operated so as to be harmonious with the surrounding area and will not impede the development, use, and enjoyment of adjacent property. Any parking lots, outdoor activity area, or waiting areas associated with the use are adequately screened from adjacent properties and from public rights-of-way.

d. The proposed use will be of a character that does not produce noise, odors, glare, and/or vibration that adversely affects the surrounding area.

e. The proposed use will not place an excessive burden on public infrastructure, facilities, services, or utilities.

f. The proposed use will not result in the destruction, loss, or damage of any feature determined to be of significant natural, scenic, or historic importance.

g. The proposed use will not create a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity of the use.

h. The proposed use will be located in proximity to pedestrian facilities (e.g. multiuse trails and sidewalks), public transportation, or offer transportation options to its client population.

Ms. Kessler went on to say the Planning Board would have the authority to impose conditions on a conditional use permit such as larger setbacks than those required by Zoning; Landscaping and/or screening; Limitation of the number of occupants; Off-street parking spaces in excess of the minimum Zoning requirements.

All congregate living and social services conditional use permits would be conditioned upon the issuance and annual renewal of a Congregate Living & Social Services License issued by the City Council.

Ms. Kessler went on to say for someone to maintain their conditional use permit and to continue to operate their use, they need to apply for this operating license through the City Council. She noted those necessary standards is proposed to be added to Chapter 46 of the City Code of Ordinances. The license would be called Congregate Living and Social Service License and would replace the current lodginghouse license standards in Chapter 46. The City Council would be the Licensing Authority and the Planning Licenses and Development Committee would review and provide recommendations on all applications and the Council has 30 days to act on the application. Licenses would need to be renewed annually.

Mr. Lamb asked Ms. Kessler to explain the procedural requirement for a conditional use permit for congregate living and social service uses. Ms. Kessler explained before this permit is issued, an application will need to be submitted to the Planning Board and a public hearing will be conducted and all abutters within 200 feet will be notified of the public hearing. The proposed Code proposed that there be on-site posting of public hearings for all conditional use permits, not just those related to congregate living and social service uses. The Board would decide on the application. If it is approved the current applicant and all future owners are permitted to operate the use as long as any conditions are adhered to.

Councilor Bosley asked about the timeframes for applications to be submitted and renewed for Congregate Living and Social Service licenses if the proposed code is adopted. Ms. Kessler stated this is something that will need to be decided. Councilor Bosley stated the City Council had modified the lodginghouse license earlier this year and asked whether different uses could be grouped together so that not all license come before the PLD Committee at the same time and asked how this is going to be handled administratively. Mr. Lamb stated staff will be happy to work with the PLD Committee on this to come up with a logical plan.

The Chairman opened the meeting for public comment.

Councilor Terry Clark referred to medium and large solar arrays that would require conditional use permits in the Industrial District and questioned whether a smoke stack factory would also require a conditional use permit. Mr. Lamb stated this would depend on the impacts a solar array has in industrial districts. He noted that the Joint Committee may reconsider the process by which solar energy systems are permitted in certain zoning districts, like the Industrial District.

Anne Knight of 26 Prospect Street stated she is opposed to permitting any group home in the medium district zone. The issue is density – eight of the 14 homes on Prospect Street are multi-unit dwellings; five are two unit apartments, one is a three unit house, there is one grandfathered property which has been functioning as a ten bed boarding house for years, and the second is a group home which has been permitted to house 16 residents through a special exception. She felt this neighborhood is already dense and did not want the zoning ordinance to make it that much easier to increase the density. Another key issue is that the conditional use permit will stay with the land. The first use operator may do a good job operating the use, but when the use is sold, the second owners might not be as good but this group home will be protected because the conditional use permit stays with the land. She asked if a group home is not handled properly whether the Planning Board would step up in a timely basis and withdraw the conditional use permit. Ms. Knight felt each permit should be on a case by case basis, otherwise residential neighborhoods would not be properly protected.

Ms. Knight went on to say that group homes are tax exempt and felt if the City increases non-profits in residential neighborhoods while simultaneously lowering the value of surrounding properties, it will impact the tax base. Councilor Bosley in response stated even though a conditional use permit might stay with the property each individual operation would need to come before the City Council annually for a license. At that time, if the neighborhood felt there are issues with a particular use, there will be opportunity to review that will come before the Council but not before the Planning Board.

Mr. Peter Espieffs was the next speaker. Mr. Espieffs, of 29 Middle Street, stated he was concerned about the uses being proposed to be introduced to the downtown and stated he was opposed to it. He indicated some of the users of the facilities are individuals who need specialized care and the downtown might not be the best place for them. He felt the city needs to look at some of the land it owns and create some type of a compound which can still be close to the downtown but not impact neighborhoods. Mr. Espieffs felt what is being proposed gives no consideration to the downtown neighborhoods and will undoubtedly destroy the downtown.

Mr. Tom Savastano of Winter Street addressed the committee next. Mr. Savastano complimented staff, as the changes being proposed are getting better with each draft. Mr. Savastano stated he was glad to see Group Home Small proposed to be extended to Rural, Low Density and Low Density 1 Zoning Districts. He felt for people who are operating such facilities being further away from downtown might actually be conducive to their clientele and encouraged the committee to move forward with expanding this area.

Mr. Savastano questioned the definition for Group Home ... *persons who are in need of personal care services and/or are in need of supervision* he asked what the difference was between personal care services and supervision was. Ms. Kessler stated personal care services are defined as *non-medical services to assist natural persons with activities of daily living* as opposed to an on-site supervisor. Mr. Savastano felt some categories of group home use might require more supervision (alcohol and drug rehab).

Mr. Savastano referred to the operating license and noted he did not see input from abutters as being something that would be taken during the operating license issuance. Ms. Kessler stated abutters are not proposed to be notified of a license review process, this is something that will be done through the City Council. Mr. Savastano felt it was important to hear from abutters. Mr.

Lamb stated a member of the public may request to be heard during the review of the issuance/renewal of a license before City Council.

Sara Barrett of 612 Granite Lake Road, Nelson addressed the committee and noted her family owns property in Keene and she was raised in Keene. Ms. Barrett stated there is one item being proposed today as being in violation of the Fair Housing Act – 2016 Joint Statement of the Department of Housing and Urban Development: *...it is illegal under the Act for local land use zoning laws to exclude or limit group homes for individual with specific types of disabilities. For example a government may not limit group homes for persons with mental illness in certain neighborhoods. The fact that the state or local government complies with the Act with regard to group homes for persons with some types of disabilities will not justify discrimination against individuals with another type of disability such as mental illness”*

Ms. Barrett referred to Table 4-1, Table of Permitted Uses prohibits Group Homes with people of specific disabilities. Lodginghouses for instance are allowed in three districts where Large Group Homes are allowed but Lodging Houses are also allowed in a fourth district where Group Homes are not allowed. Drug and Alcohol Treatment Facilities are only allowed in two zoning districts. She asked that the code be reviewed keeping in mind the Fair Housing Act and adjustments made so it complies with Federal Law. Ms. Barrett stated working with organizations that try to procure federal funding for programs and being in violation of the Act could risk the entire region from receiving these funds. She stated the Department of Justice and HUD have made it very clear that municipalities may not apply zoning laws based on fears, stereotypes, prejudices and unsubstantiated assumptions of prospective residents.

Mr. Lamb in response, stated staff is aware of Fair Housing Regulations and are doing their best to accommodate the city’s interest while keeping in mind the Act. He noted the Drug and Alcohol category which was raised may not be protected classes under this Act. Mr. Lamb stated staff is aware of the issues raised and will refine the document as they move forward.

Mr. Paul Bilgen of 391 Court Street was the next speaker. Mr. Bilgen referred to the Surface Water Protection Ordinance and noted there was one key point that was missed which is to establish setbacks, the setback from the boundary needs to be mentioned. With respect to non-conforming uses, if a building was to be enlarged it can be enlarged to a certain percentage of its footprint but that it cannot be made more non-conforming.

Ms. Kessler in response stated in the surface water ordinance there is a requirement that surface waters be delineated by a certified wetlands scientist and that the buffer zone be 30 feet in most districts and 75 feet in the rural, conservation and agriculture districts. This buffer gets delineated from the edge of the surface water by a scientist and added this is spelled out in the text of the regulations.

With reference to non-conforming uses, there are standards to address the expansion of these uses/structures in the proposed code. She only reviewed the significant changes proposed to the current regulations; most of the existing regulations related to non-conforming uses is not proposed to change.

Ms. Ann Savastano of 75 Winter Street stated she is happy to see there is consideration being given to expanding the area where small group homes can be located. She indicated it was mentioned at the last meeting that it was important to look at the needs of a group home and the

needs of a surrounding area – for a domestic shelter a safe place would perhaps be in a rural setting. Ms. Savastano felt as far as the vibrancy of the downtown was concerned, it was a mistake to cluster a lot of group homes with substance abuse issues – it will affect the downtown. She recalled walking into the library and seeing people from 100 Nights using it as a day shelter.

Ms. Savastano asked when considering the conditional use permit standards whether there was any consideration being given to abutting property values. If a conditional use permit is considered in a rural district, to give some thought to transportation. Ms. Kessler in response stated property values are not explicitly listed as a consideration but there are other standards that need to be met to consider the land use impact on abutting properties. She noted when staff looks at this they look at density impacts and site impacts such as traffic, noise, etc. Staff is not developing standards based on the people who would occupy these homes or uses. She noted that there have been multiple comments made by the public this evening about the categories of people who would occupy these homes, and wanted to clarify that staff is focused on the land use implications of how these use types are operated. Mr. Lamb added it was important for the committee to understand this is an analysis of land use– it is a question about density and impact on a larger scale.

Gaby Micieli of 45 Franklin Street addressed the committee next and stated she was confused why some of these uses such as homeless shelters are being attempted to be hidden from the public. She felt the out of sight out of mind idea seemed counteractive to her. She referred to the example of having a six foot fence around the site. She expressed concern about the over flow area cannot be in close proximity to the original shelter which can become an issue for the waiting area as well. Ms. Micieli did not feel having 100 Nights split their resources between two different locations was beneficial. Ms. Micieli addressed the issue of counting children in the number of occupants and noted to how this would be handled if there are infants. Ms. Kessler stated the standard related to screening of outdoor areas and waiting areas was proposed largely out concern for the impacts this use might have on adjacent to residential districts. It was not about being out of sight out of mind, but more focused on an emergency shelter situation a large group of people may be waiting to come in or are leaving a facility – the screening is proposed not only for abutters but also for the clients the site is serving.

Ms. Loret Simonds of 79 Woodburn Street stated she has one house between her home and Prospect Home which currently houses 26 people. Across the street is Forest View Apartments which has close to 100 low income housing units. Ms. Simonds felt Ward 3 and 4 seem to carry the lion's share of subsidized housing compared to the other three wards in the city. With reference to the fair housing act issue raised earlier, she stated zoning in its 100 year history zoning has been about protecting property values and stated there are many cases in the courts that have been over turned on that fact alone. She stated she appreciates Group Homes be left out of medium density zones and would like not to see anymore group homes in her neighborhood. She stated this is not about the fair housing act but about property rights above all else and that is what the City Council is charged to do as its number one responsibility and is the number responsibility of the Planning Board and Zoning Board. Councilor Jones stated what Ms. Simonds is referring to is subsidized housing which is not the same as group homes.

Mr. Jim Knight of 26 Prospect Street asked with the conditional use permit application renewal process, how the neighborhood would be notified. Ms. Kessler stated when a conditional use permit application is submitted, abutters 200 feet from the site would be notified by mail and an on-site notice will also be placed. She explained that the conditional use permit would not be

renewed annually, this is the City Council license that would be required for congregate living and social service uses. She noted that when this license is up for renewal annually, there is no suggestion at the present time to notify abutters as the license is to make sure the applicant is adhering to life safety codes and operational codes. The public would be made aware of the city council meeting where the license renewal would be addressed through a posting of the city council agenda.

Chair Bosley stated she is Chair of the PLD Committee which hears these license renewal applications. What is being proposed is that there will be a pre-designated time of the year when individual licenses will be heard, and someone could contact the City Clerk's office to inquire when a specific license is due to be renewed. Mr. Knight addressed the Fair Housing Act issue raised earlier and referred to Paragraph 3 of HR1150 of 1988 where it is clearly indicated that following shall not be considered a handicap – alcohol use and substance abuse and felt the wording is clear that these two conditions are exempt.

Councilor Clark referred to medium and large solar in industrial zones and asked the committee to consider that there are already expensive restrictions on developing solar energy and felt no more restrictions should be added. He noted solar arrays do add to the increase to traffic, produce noxious fumes and felt they were better neighbors and asked for the committee's reconsideration. Mr. Lamb stated staff's original concept was to address these types of installations in the rural and residential settings and might have missed something in industrial and corporate park settings.

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

A motion was made by Council Phil Jones to continue the public workshop on O-2020-10 and O-2020-11 to the December 14, 2020 Joint Committee meeting. The motion was seconded by Pamela Russell Slack and was unanimously approved by roll call vote.

The meeting adjourned at 9:30 PM.

Respectfully submitted by,
Krishni Pahl, Minute Taker

Reviewed and edited by Tara Kessler, Senior Planner