

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, June 23, 2021

7:00 PM

Council Chambers A

Members Present:

Kate M. Bosley, Chair
Mitchell H. Greenwald, Vice Chair
Philip M. Jones
Catherine Workman
Gladys Johnsen (arrived at 7:08 PM)

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Mark Howard, Fire Chief
Rhett Lamb, Community Development
Director
John Rogers, Zoning Administrator/Health
Official

Members Not Present:

All Present

Chair Bosley called the meeting to order at 7:00 PM and explained the procedures of the meeting.

1) 2021 Fire Prevention Parade – Fire Department

Fire Chief Mark Howard stated that his request is for the PLD Committee to recommend that the Fire Department be granted permission to use City property for the 2021 Fire Prevention Parade on Sunday, October 3. He continued that they want to restore the parade to pre-COVID strength or greater. Annually the Fire Department requests permission for use of the city streets for the Fire Prevention Parade. The parade kicks off Fire Prevention Week activities. This year they are requesting use of the parking lot of Fleet Services at 350 Marlboro St. for the parade line-up. The parade will start at 3:00 PM and proceed westerly along Marlboro St., north on Main St. to Washington St. where it will disperse at Vernon St. Following the parade is an awards ceremony at the Central Fire Station. The parade will be held rain or shine. Annually they invite any City Councilors who wish to participate to join them on the judges' viewing stand on Railroad St. and Main St.

Chair Bosley asked if it is correct that this parade was not held last year. Chief Howard replied that is correct. Chair Bosley asked if there were any questions from the committee.

Councilor Jones asked, regarding Chief Howard's comment about it returning to what it was like pre-COVID, if they will be doing the musters. Chief Howard replied no, just the parade. He continued that they have not done the musters during his tenure here, going on 28 years. They hope that post-COVID they will have increased participation of bands and departments.

Councilor Greenwald made the following motion, which was seconded by Councilor Jones.

On a vote of 4-0, the Planning, Licenses, and Development Committee recommends that the Fire Department be granted permission to use City property for the 2021 Annual Fire Prevention Parade to be held on Sunday, October 3, 2021.

2) Albert Grauer - Application for a Lodging House License – 85 Winchester St.

Trevor Grauer of 85 Winchester St. stated that he and Albert Grauer have a lodging house at 85 Winchester St. and want to renew the license for another year. He continued that there have been no issues for the extent of their time operating there.

Chair Bosley asked if Mr. Grauer has met with the different City departments. Mr. Grauer replied yes, they had a Fire and Code inspection and as far as he knows, everything is a green light.

Chair Bosley asked if there were any questions from the committee. Hearing none, she asked if members of the public had any questions. Hearing none, she asked to hear from City staff.

John Rogers, Health Official, stated that as Mr. Grauer indicated, Fire and Code inspections were conducted at 85 Winchester St. and there were no issues on the Building/Health side.

Chief Howard stated that Captain Bates conducted the Fire inspection at 85 Winchester St. and there is one item that is being serviced. He continued that it is not a life-threatening issue or any reason to vacate the premise and the Grauers have 30 days to make that correction.

Councilor Johnsen arrived at 7:08 PM.

Councilor Greenwald made the following motion, which was seconded by Councilor Jones.

On a vote of 5-0, the Planning, Licenses, and Development Committee recommends that a lodging license be issued to Mr. Albert Grauer for property located at 85 Winchester Street. Pursuant to Ordinance O-2019-14, the term of the license would extend to November 30, 2022. Said license is conditional upon the following: No more than 8 persons may reside on the premises and no less than 4 vehicular parking spaces must be provided on the premises. Access to the common areas of the licensed premises shall be granted to the Police, Community Development, and Fire Departments at all reasonable times.

The continuation of license is further subject to and conditioned upon the successful passage of two inspections to be conducted by the City; and compliance with all applicable laws, ordinances, codes and rules and regulations. The owner shall notify City staff of any change in

the building operator; failure to do so may be grounds for suspension or revocation of this license. This license may be revoked in accordance with the City licensing process.

3) Cheshire Housing Trust - Application for a Lodginghouse License – 86 Winter St.

Chair Bosley stated that Linda Mangones is not able to attend tonight. She asked to hear from staff.

John Rogers stated that Building, Health, and Fire conducted inspections today at the Winter St. property. He continued that there were no Building or Health issues. There is one minor item being taken care of. He recommends this license be granted.

Chief Howard stated that Capt. Bates was at the property today along with Mr. Rogers, to do the Fire inspection. He continued that he identified a couple issues from a Fire Code standpoint, which are just housekeeping matters, not life threatening. Cheshire Housing Trust has the allocated time to make corrections.

Councilor Jones stated that Cheshire Housing Trust has been operating for years. He asked Rhett Lamb, Community Development Director, if the reason this license application is before the committee tonight is due to the City's change in the definition of this license. Mr. Lamb replied that the City is in the process of identifying lodging houses that might fall under the new Code that had not already been licensed. He continued that it turns out this one was revealed a couple years ago, so they have been working with the owner to bring it into compliance through the old lodging house license. He thinks this is the second year, possibly the third, that this facility has been licensed through the PLD Committee's regular process.

Chair Bosley stated that since he brought up the new policy for licensing, she wants to mention that these licenses are going to be extended through November 2022, because they are in the process of creating the new licensing committee. Each of the new licenses under the new Land Use Code will have specific timeframes that they will renew under, and this particular timeframe is identified to happen in November. The current license motions will allow these licenses to extend through November.

Councilor Jones stated that to add to that, he believes the license requests will no longer be coming through the PLD Committee. He asked if it is correct that they will instead be going to an appointed board. Chair Bosley replied yes, and the PLD Committee would be used as an appeal board.

Chair Bosley asked if there were any further questions. Hearing none, she asked if members of the public had any questions. Hearing none, she asked for a motion.

Councilor Greenwald made the following motion, which was seconded by Councilor Jones.

On a vote of 5-0, the Planning, Licenses, and Development Committee recommends that a lodging license be issued to Cheshire Housing Trust for property located at 86 Winter Street. Pursuant to Ordinance O-2019-14, the term of the license would extend to November 30, 2022. Said license is conditional upon the following: No more than 20 persons may reside on the premises. Access to the common areas of the licensed premises shall be granted to the Police, Community Development, and Fire Departments at all reasonable times.

The continuation of license is further subject to and conditioned upon the successful passage of two inspections to be conducted by the City; and compliance with all applicable laws, ordinances, codes and rules and regulations. The owner shall notify City staff of any change in the building operator; failure to do so may be grounds for suspension or revocation of this license. This license may be revoked in accordance with the City licensing process.

4) Hundred Nights, Inc - Application for a Lodging House License – 15 Lamson St.

Mindy Cambiar of 447 Park Ave. stated that she is the Executive Director of Hundred Nights. She continued that she is here to respectfully ask that the PLD Committee renew Hundred Nights' lodging house license at 15 Lamson St. for 26 beds.

Mr. Rogers stated that due to scheduling conflicts, the Building and Health inspections have not been conducted yet. He continued that those are scheduled for Monday. Regarding the inspections they have done in the past, this is one of the most long-standing lodging house licenses the City has had. Staff recommends granting this license conditional upon Hundred Nights passing the inspections on Monday.

Chief Howard stated that Capt. Bates is scheduled to conduct the Fire inspection on Monday as well. He continued that he concurs with what Mr. Rogers said. If there are any Fire issues, they are housekeeping ones. The Fire Department is there throughout the year and they have not seen any obvious issues at those times, so he suspects it will be a normal process moving forward next week as well.

Councilor Greenwald asked Ms. Cambiar if the license is for 100 nights, or if this is now a 365-night license. Ms. Cambiar replied that Hundred Nights has been operating year-round since 2017. Councilor Greenwald replied that he wanted it in the record that this is a year-round license.

Chair Bosley asked if there were any further questions from the committee. Hearing none, she asked if members of the public had any questions. Hearing none, she asked for a motion.

Councilor Greenwald made the following motion, which was seconded by Councilor Jones.

On a vote of 5-0, the Planning, Licenses, and Development Committee recommends that a lodging house license be issued to Patti Moreno for property located at 15 Lamson Street.

Pursuant to Ordinance O-2019-14, the term of the license would extend to November 30, 2022. Said license is conditional upon the following: no more than 26 persons may reside on the premises at any one time. Access to the common areas of the licensed premises shall be granted to the Police, Community Development, and Fire Departments at all reasonable times.

The continuation of license is further subject to and conditioned upon the successful passage of two inspections to be conducted by the City; and compliance with all applicable laws, ordinances, codes and rules and regulations. The owner shall notify City staff of any change in the building operator; failure to do so may be grounds for suspension or revocation of this license. This license may be revoked in accordance with the City licensing process, and it is conditional upon successful inspection by Fire and Code Enforcement.

Chair Bosley stated that she looks forward to hearing back regarding those inspections before the next City Council meeting.

5) Donna Forte - Application for a Lodging House – 57 Winchester St.

Tracy Parkhurst, of 281 Moran Rd., Hopkinton, NH, stated that he is representing Donna Forte, Keene Student Rentals, for a relicensing of 57 Winchester St.

Chair Bosley asked if Mr. Parkhurst has met with City staff for the inspections. Mr. Parkhurst replied yes.

Mr. Rogers stated that inspections were conducted at 57 Winchester St. He continued that there were a few minor housekeeping issues that will be taken care of if they have not already been. Staff recommends granting this license.

Chief Howard stated that Capt. Bates conducted the Fire inspection at 57 Winchester St. He continued that there were five items that are being addressed by the Petitioner. They were, to use Mr. Rogers' term, housekeeping issues. There were no life-threatening issues. They have the allocated time to take care of the issues. Staff recommends moving forward with this license.

Councilor Greenwald made the following motion, which was seconded by Councilor Jones.

On a vote of 5-0, the Planning, Licenses, and Development Committee recommends that a lodging license be issued to Donna Forte, Keene Student Rentals, for property located at 57 Winchester Street. Pursuant to Ordinance O-2019-14, the term of the license would extend to November 30, 2022. Said license is conditional upon the following: no more than 14 persons may reside on the premises at any one time. Access to the common areas of the licensed premises shall be granted to the Police, Community Development, and Fire Departments at all reasonable times.

The continuation of license is further subject to and conditioned upon the successful passage of two inspections to be conducted by the City; and compliance with all applicable laws, ordinances, codes and rules and regulations. The owner shall notify City staff of any change in the building operator; failure to do so may be grounds for suspension or revocation of this license. This license may be revoked in accordance with the City licensing process.

6) Continued Discussion – Parklets

Chair Bosley stated that the City Attorney has been doing some research about parklets. She asked him to give the committee an update.

City Attorney Tom Mullins stated that this matter came before the committee some time ago, and it was not something he had been thinking about very much. He continued that like everyone else, he was not entirely sure what a parklet was and it was interesting to learn about what they are and how they are used in the right-of-way. Tonight he will share the information that he stumbled upon. The general understanding in municipalities, including Keene, is that municipalities have a fairly broad authority to regulate within streets and highways. That is almost a given, to a large extent. His comments tonight are focused on NH law. He knows parklets are permitted around the country and even in other municipalities in NH, but regarding the law in NH, as the City Council has heard him say before, in NH municipalities can only act with the authority that is specifically given to them by statute. In many other states, including some surrounding ones, if the state has not decided to legislate within a field then the municipality is free to do that. That is not true in NH. The City of Keene has to act with that authority, and they have to locate that authority somewhere in order to take that action. Generally, that authority is found in RSA 47-17 – you can create ordinances and bylaws for a whole list of things, and one is the use of the public way. That statute says that you can regulate such things as how it is used, where it is used, what is left on it, how it is built, and other issues like that.

The City Attorney continued that he had RSA 47-17 in mind when the parklet topic came up, thinking that was probably the authority the City needed. However, when he was researching another issue that the City Council asked him to look at, involving parking issues, he stumbled across information in the towns' section of authority within the state. Cities have one section of authority and towns have another, but in NH, cities and towns share the authority that the towns have. While he was doing this other research, he found two statutes in the 31 series, which applies to towns, which gave him some pause. One is a statute that gave towns, and by extension, cities, the specific authority to allow the placement of lumber and construction materials in a public way for up to 6 months, but not for any other retail activity. The other statute was the authority for cities and towns to have street fairs, conducted within the street under a license for three business days, during which commercial or retail business could be conducted. Those statutes got him thinking, because if the legislature thought a city had the ultimate authority under RSA 47-17 to do this type of activity, either placing items in the right-

of-way, like lumber, or having a street fair, it would not have seen fit to give them that specific authority to act.

The City Attorney continued that as he started doing more research about parklets he got deeper and deeper into the statutes and case law. NH law with respect to roads goes back hundreds of years. The statutes' intention, from his perspective, and the intention of the court decisions he could find with respect to this issue, is to make it clear that roads are to be used for a "viatic use." That means to travel over, and to move goods, property, and people from point A to point B over the roads. That is the intention of what roads are for. Over the years, other things have been attributed as okay in that kind of context, such as parking spaces. As motorized vehicles developed, there was the opportunity and necessity of having to stop the vehicle in a particular location, and the issue of whether or not you could even park on the road was dealt with by the courts. The courts said those kinds of motor vehicles are usual and incidental now to the purpose of the roads, which is a viatic purpose, so it is okay to have parking spaces. By extension, if it is okay to have parking spaces, it is okay to have parking meters. All of these are attributed to the underlying idea that that is what the streets and roads are for.

The question then became, with respect to parklets in particular: is that a type of viatic use that the statutes and courts are contemplating? His assessment is such that he has reservations about that, in terms of the City's authority. However, he cannot sit here and tell the committee he has a definitive answer for that question, because the courts have not had the necessity, at least at this point, of thinking about that. Given the other statutes that apply with respect to the general power of the municipalities to regulate in the right-of-way, the courts may decide that parklets are an acceptable use. One example, although it came up in a different context, due to the pandemic we just went through, is that prior to a year ago, he thinks most attorneys in the state would have had some doubt as to whether municipalities could enact mask ordinances. Because there is no specific statute that says that. But the Superior Courts ultimately determined that under a general authority to regulate public health, they could do that. Whether the courts would make that same sort of general statement, he does not know.

The City Attorney continued that he wanted to raise the issue that this is an open question, and that there is some risk associated because of that. If the committee wants to allow parklets to occur, he suggests it be in connection with an ordinance that lays out specific standards for when, how, where, and what the conditions are with respect to this use, and what is necessary for protecting public safety with respect to the highway, and how they would go about revoking a license if needed. That would be a necessity with respect to proceeding with this proposal. Lastly, he has reached out to some of his compatriots around the state, and other attorneys who are now having to look at this question as a result of the end of COVID are raising the same sorts of concerns that he is.

Chair Bosley stated that that is quite a bit of information and it might shift some ideas about what the committee wants to do with this.

Councilor Johnsen thanked the City Attorney for the information. She continued that having been in the House of Representatives, she wonders if the PLD Committee could speak to their Senator or local Representatives and if maybe there is some way those people could assist them in coming up with a way to update this kind of law. Secondly, she asked, she heard the City Attorney say something about lumber?

The City Attorney replied that there is a specific statute that provides that a municipality can license the placement in the street of lumber products for up to four months. He continued that Councilor Johnsen's first question/suggestion is a valid point. One way to clear up the ambiguity is to have the legislature specifically provide the municipality with the authority to act. That would be the best result in order to go forward.

Councilor Johnsen asked if that means the City Attorney would be willing to connect with the Senator and/or Representatives, or if he wants the PLD Committee to connect with them. The City Attorney replied that he is sitting at the direction of the Committee and the City Council, but working with the City Manager, if that is the will of the Council, they are already in contact with their Representatives and the Senator on other issues. They could certainly do that.

Chair Bosley stated that if that is what the Committee wants, they should put a motion forward to direct the City Manager and the City Attorney to draft some sort of communication to get that process started. She continued that Councilor Johnsen is welcome to make that motion, but she would like the committee to flesh out what direction they want to see this go in. Toward the end of the conversation, if it looks like the Committee is not going to move forward with an ordinance because of concern of risk, this would be a great alternative.

Chair Bosley stated that concerns about risk have been brought forward, and she wants to point out to the committee that this whole conversation started with a request for a parklet. She continued that they have had several meetings about this now, and she has noticed that no other business owners have come before the committee on the heels of that request, saying that they would also like to have a parklet. Thus, she believes that at this time, this request is a one-off and that they have compromises available to that business owner and ways to accommodate outdoor dining in its current capacity. Until they can resolve some of these concerns about the risk to the City, she would not be comfortable moving forward with a full ordinance.

Chair Bosley asked if there were any further questions or comments from the committee. Hearing none, she asked if members of the public had any questions.

Councilor Johnsen stated that she knows this is a one-off request, but part of her reason for wanting to let this happen was to help a business maybe recoup some of the money lost during the past year. She would hate to see it tied up in legalese. She hopes the City Council can give them some kind of decision for this summer and then go through the regulatory process.

Chair Bosley stated that she understands that. She continued that she feels it is her job to make her decision based on the risk that the City is willing to take, and that they cannot take on certain risks to help individuals. They have to look at all of the people. What she has learned during her time on the City Council is that things she thinks should be simple and happen quickly end up taking a considerable amount of time because nothing seems to go as smoothly as they would like it to. There is always some sort of tributary or road that they end up going down that is not necessarily something they would have thought of at the beginning. And it has to be managed, and they have to clear up those loose ends before they can get back to the nut of what they are trying to accomplish. This is one of those situations, where they have stepped off the ledge here. The whole idea initially had support from this whole committee. She did not see this conversation going this way, but with these concerns being raised, now it is the committee's responsibility to weigh that decision they are making for the city as a whole against the benefit to one business owner. That business would not lose their ability to do outdoor dining; it would just be reduced in size. That is where her thought process is going, but she would like to hear opinions from other committee members.

Councilor Greenwald stated that for the sake of his conflict in the matter, this conversation needs to stay focused on parklets in general, not the "more time" item D. He continued that he thinks the appropriate action is to vote on this, and if Councilor Johnsen wants to move forward with something else and send a memo and run it through the process of contacting their Senator or Representatives that would be the way to go.

Chair Bosley stated that she agrees with Councilor Greenwald that a letter from Councilor Johnsen, addressed to the City Council, so they can move forward with a recommendation to ask that a letter be drafted to initiate a legislative process. Councilor Johnsen replied that she would be happy to draft that communication.

Councilor Greenwald made the following motion, which was seconded by Councilor Jones.

By a vote of 5-0, the Planning, Licenses, and Development Committee accepts the discussion on parklets as informational.

7) **Adjournment**

There being no further business, Chair Bosley adjourned the meeting at 7:37 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Edits submitted by the City Clerk's Office